

No. 12481

United States
Court of Appeals
For the Ninth Circuit.

FAY J. HANSEN,

Appellant,

vs.

ERNEST A. JONSON, Receiver of Vita-Pakt Associates, Inc., an Insolvent Corporation, and
R. C. NICHOLSON, Trustee of the Estate of
Fay J. Hansen, Bankrupt,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Western District of Washington
Northern Division.

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District of the United States for the
Western District of Washington, Northern
Division

In Bankruptcy, No. 37835

REFEREE'S CERTIFICATE ON REVIEW

In the Matter of
FAY J. HANSEN,

Bankrupt.

To the Honorable Lloyd L. Black, United States
District Judge:

I, Van C. Griffin, Referee in Bankruptcy in
charge of these proceedings, do hereby certify:

The schedules attached to the petition recited
that the bankrupt owned certain real and personal
property which the bankrupt and his wife had
transferred while under duress from threats of
criminal prosecution to the Vita-Pakt Associates,
Inc., just seven days before the filing of the peti-
tion in bankruptcy. The bankrupt claimed as ex-
empt his equity in the property so transferred, and
the trustee in making his report upon exemptions,
recommended that the claim of exemption be al-
lowed and the Referee entered an order allowing
the exemptions as claimed.

Thereafter the bankrupt by petition secured from
the Referee an order directed to the trustee and
Ernest A. Johnson, receiver for Vita-Pakt Associ-
ates, Inc., to show cause why he should not, in fact,

have the exemptions as claimed. Before this matter was heard the trustee filed a petition for and secured an order directing the receiver to appear and show cause why the conveyances by the bankrupt to the corporation should not be declared void, and in response thereto the receiver appeared specially and objected to the court's jurisdiction. On the 19th day of November, 1948, a hearing was had upon the receiver's special appearance, and the following evidence and no other was received thereon.

R. C. Nicholson testified as follows:

I am the trustee in the bankruptcy of Fay J. Hansen. After my appointment as trustee the keys to Mr. Hansen's house were turned over to me, his car was stored in a garage in my name and the storage check was turned over to me; and I have been in physical possession of said house and car ever since and of the furniture and equipment in said house, and am now in possession of it.

Fay J. Hansen testified as follows:

I am the bankrupt in above case. At the time I filed my petition in bankruptcy herein I was in actual physical possession of my house at 4113 S.W. 109th St., Seattle, Wash., all the household furniture and equipment located in the house, and the Oldsmobile automobile. I stored the car in a garage in the name of Mr. Nicholson, the trustee, and I turned over to my attorney, Mr. Wiley, the keys to the house and the keys and claim check to the car, for delivery to the trustee.

Alex Wiley testified as follows:

I am attorney for the bankrupt, Mr. Hansen. Shortly after the first meeting of creditors in said bankruptcy Mr. Hansen delivered to me the keys to his house and the claim check for his Oldsmobile car for delivery to the trustee. I did thereupon deliver said keys and claim check to Mr. Day, the attorney for the trustee, in his office in the Dexter Horton Building.

(End of evidence.)

Thereafter the trustee, receiver and bankrupt entered into a written stipulation that the property transferred as above referred to should be sold by the trustee under the supervision of the Referee and that the rights and liens of the said parties be transferred from the property to the proceeds of the sale thereof, subject to costs incident to the sale and administration thereof.

Between the time of the filing of the stipulation and the conclusion of the hearing upon the show-cause orders, the trustee had sold all the property for cash, and the Referee denied the receiver's special appearance because of the testimony that the trustee had possession of the property and because of the fact that the parties had stipulated that the trustee might sell the same, and treated the hearing upon the show-cause orders as

1. A petition of the bankrupt to have paid to him out of the money his exemptions as claimed;

2. A petition of the trustee that he be awarded all the funds because the award of exemptions was invalid and that the conveyances to the corporation were void; and

3. A petition of the receiver that the funds be awarded to him because he held valid conveyances and the bankruptcy court had no jurisdiction to determine the validity of the conveyances.

A hearing was had on November 29, 1948, and on December 9, 10, and 16, 1948, which was stenographically reported and a transcript thereof made by the court reporters, and which the Referee certifies to be accurate and will transmit with this certificate without a summary thereof. A part of the hearing on these matters was held on December 8, 1948, at which no court reporter was in attendance; therefore, the Referee has made a summary thereof.

Thereafter the Referee filed a written memorandum decision and entered a written order awarding to the bankrupt his exemptions as claimed, less the amount of costs to be charged against the same, and adjudging that the conveyances to Vita-Pakt Associates, Inc., were void and the trustee was, therefore, entitled to the remainder of the funds from the sale of the property.

Ernest A. Jonson, receiver for Vita-Pakt Associates, Inc., and the trustee, R. C. Nicholson, each feeling aggrieved at the decision and order of the Referee, have filed petitions for review setting forth therein the errors of which they complain. Each

of the parties has filed a proposed summary of certain portions of the testimony taken when no court reporter was present and has filed objections to the summary proposed by his adversary and motions to strike. A hearing lasting a half day has been held at which said matters were argued and the parties were given an opportunity to refresh the recollection of the Referee. The Referee has elected to make his own summary of the hearings held where no court reporter was in attendance.

The issues as seen by the Referee are set forth in his memorandum decision, but briefly he certifies the questions involved in this review to be:

1. Were the conveyances from Hansen to Vita-Pakt preferential and void?

2. Did the receiver sufficiently trace the identity of the money drawn from the corporation into the proceeds of the sale of this property to entitle him thereto on his contention that he was not a creditor but merely tracing and recapturing his own property?

3. When the corporation demanded and received from Hansen property acquired by Hansen from sources other than money taken from the corporation, did it make an election to become a creditor and did it thereby estop itself from asserting the right to recapture the property?

4. Is the order allowing the exemptions controlling unless and until vacated or set aside for good cause shown?

5. Were the conveyances absolutely void because obtained by duress?

6. If the order setting aside the exemptions were deemed vacated, should the bankrupt be denied his exemptions where the conveyance was made of all his property to protect his creditors and not to defraud them? If the conveyance was not under duress, is it comparable to a general common law assignment for the benefit of creditors, which has been held not to deprive the assignor of a later claim to exemptions in bankruptcy.

7. Did the Referee commit error by action without jurisdiction or abuse his discretion in denying the receiver's special appearance and treating the responses to show-cause orders as petitions for apportionment of the sale price?

[Endorsed]: Filed February 24, 1949.

[Title of District Court and Cause.]

TRUSTEE'S REPORT OF EXEMPT
PROPERTY

To Van C. Griffin, Referee in Bankruptcy:

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid as his own property, under the provisions of the Act of Congress relating to bankruptcy, as his exemptions allowed by law and claimed by him in his schedules filed in the above-entitled proceeding.

1. Real Property.

Particular Description—Equity in real property described as:
 Lot 22, Block 4, Arroyo Vista, King County, Washington.
 (Rem. Rev. Stat. §528 & 532)—to the extent of, estimated
 value \$4,000.00.

2. Furniture.

Particular Description—Household furniture and furnish-
 ings situated on the property described as Lot 22, Block 4,
 Arroyo Vista, King County, Washington,—equity. (Rem.
 Rev. Stat. 563)—to the extent of, estimated value \$500.00.

3. Wearing Apparel.

Particular Description—Wearing apparel and ornaments of
 the person. (Rem. Rev. Stat. §563), estimated value \$300.00.

4. Personal Property.

Particular Description—Equity in 1948 Oldsmobile. (Rem.
 Rev. Stat. §563)—to the extent of, estimated value \$250.00.

Dated this 31st day of August, 1948.

/s/ R. C. NICHOLSON,
 Trustee.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 3, 1948.

[Title of District Court and Cause.]

ORDER APPROVING TRUSTEE'S REPORT
 OF EXEMPTIONS

At Seattle, Washington, in said district, on the
 20th day of October, 1948.

It appearing to the Court that the trustee herein
 has more than ten (10) days prior to the entry of

this order filed his report of exempted property in accordance with law, and no objections having been taken thereto,

It Is Ordered that the said trustee's report of exempted property be and the same hereby is, in all things confirmed, and the bankrupt's claim to exemptions is hereby allowed accordingly.

It Is Further Ordered that the property specified in such report be and the same is hereby set apart to the bankrupt as exempt.

/s/ VAN C. GRIFFIN,
Referee in Bankruptcy.

[Endorsed]: Filed October 20, 1948.

[Title of District Court and Cause.]

PETITION FOR ISSUANCE OF ORDER
TO SHOW CAUSE

Comes now Fay J. Hansen, bankrupt herein, and petitions the Court for the issuance of an order directed to Ernest A. Jonson, as receiver of Vita-Pakt Associates, a corporation, and R. C. Nicholson, trustee herein, to show cause before the Referee in Bankruptcy herein why certain transfers and conveyances made by bankrupt to said Vita-Pakt Associates, Inc., should not be set aside and declared void; and in support of said petition alleges:

I.

That petitioner is the bankrupt in the above-entitled cause.

II.

That on July 29, 1948, petitioner executed and delivered to Vita-Pakt Associates, Inc., a corporation, without any consideration therefor, a bill of sale of all his household furniture located at 4113 S.W. 109th St., Seattle, Wash., and of his 1948 Oldsmobile automobile; and a quit-claim deed of the following real property located in King County, Washington, to wit: Lot 22, in Block 4 of Arroyo Vista (being the home of petitioner), and Lot 1, Block 3, Arroyo Vista; and a transfer of all of his shares of stock in said Vita-Pakt Associates, Inc.

III.

That thereafter, and after the adjudication in bankruptcy of petitioner herein, said Ernest A. Jonson, having been appointed receiver of said corporation on application of the directors and stockholders thereof, by the Superior Court of the State of Washington for King County, did qualify as such receiver, and that he is still acting as such receiver.

IV.

That at the time of said transfers said bankrupt was insolvent; and said Vita-Pakt Associates, Inc., had reasonable cause to believe that said petitioner was insolvent. That said transfers were made by pe-

tioner within four months before the filing of his petition in bankruptcy herein. That the effect of such transfers would be to enable said Vita-Pakt Associates, Inc., to obtain a greater percentage of its debt, if any it can establish, than any other creditor of the same class; and such transfers constituted an illegal preference and are void as to your trustee herein.

V.

That said transfers were made without fair consideration by bankrupt, who was thereby rendered insolvent, and were fraudulent as to bankrupt's then existing creditors, and are null and void as to the trustee herein.

VI.

That said transfers were made without any consideration whatever, past or present, and were extorted from bankrupt by threats of criminal prosecution; and are entirely null and void as to bankrupt and as to the trustee herein.

VII.

That all of the property, except said shares of stock which was the subject of said conveyances, was in the possession of bankrupt at the time of his adjudication in bankruptcy; and since said adjudication has been and now is in the possession of the trustee herein.

VIII.

That part of the property so conveyed has been

allowed and set off, by the trustee herein, as exempt to the bankrupt, and the Referee in Bankruptcy has duly entered his Order Approving Trustee's Report on Exemptions. But that said trustee has been unable, and is still unable, to deliver said exempt property to petitioner herein, on account of the claims thereto made by Ernest A. Jonson as such receiver by virtue of said aforementioned conveyances.

IX.

That it is to the benefit of the above bankrupt estate that the validity of the said transfers be adjudicated as soon as possible, so that the trustee may proceed with the prompt administration and liquidation of this estate.

Wherefore, petitioner prays that an order be issued requiring Ernest A. Jonson, as receiver of Vita-Pakt Associates, Inc., a corporation, and R. C. Nicholson, as trustee herein, to appear before the Referee in Bankruptcy herein at a time certain to show cause, if any they have, why said transfers and conveyances by said bankrupt to Vita-Pakt Associates, Inc., a corporation, should not be adjudged null and void as to petitioner and the trustee herein.

/s/ ALEX WILEY,

Attorney for Petitioner.

Duly verified.

[Endorsed]: Filed November 2, 1948.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

The above-entitled matter having come on duly for hearing upon the petition of the bankrupt herein for an Order to Show Cause herein, and no adverse interest being represented, and the Court being duly advised, and believing said Order should issue;

Now, therefore, it is Ordered that Ernest A. Jonson, receiver of Vita-Pakt Associates, Inc., a corporation, and R. C. Nicholson, trustee herein, be and appear before the undersigned Referee in Bankruptcy in his Courtroom in the United States Courthouse, Seattle, Washington, at the hour of 2:00 o'clock p.m., on the 16th day of November, 1948, then and there to show cause, if any they have, why those certain transfers and conveyances by Fay J. Hansen, bankrupt herein, to Vita-Pakt Associates, Inc., a corporation, made on or about July 29, 1948, of all his household furniture and equipment, one 1948 Oldsmobile automobile, and the following real property: Lot 22, in Block 4, of Arroyo Vista, and Lot 1, Block 3, Arroyo Vista, all in King County, Wash., should not be adjudged to be null and void as to the trustee herein and as to bankrupt.

It is further Ordered that a duly certified copy of this Order shall be served upon said Ernest A. Jonson, as such receiver, and R. C. Nicholson, trustee in above matter, at least five days before the date set for the hearing on said petition.

Dated at Seattle, Washington, this 2nd day of November, 1948.

/s/ VAN C. GRIFFIN,
Referee in Bankruptcy.

[Endorsed]: Filed November 2, 1948.

[Title of District Court and Cause.]

STIPULATION

The undersigned, Carl Jonson, one of the attorneys for Ernest Jonson, Receiver of Vita-Pakt Associates, Inc.; Alex Wiley, attorney for Fay J. Hansen, the bankrupt, and William J. Walsh, Jr., attorney for R. C. Nicholson, Trustee of the Estate of Fay J. Hansen, a bankrupt, representing principals who presently claim some right, title or interest in the following described property:

Lot 22, Block 4, Arroyo Vista Addition, King County, Washington.

Lot 1, Block 3, Arroyo Vista Addition, King County, Washington.

1948 Oldsmobile (Motor No. 8-138387H).

Household furniture and furnishings, as itemized in the trustee's inventory on file herem, said property being located in the residence at 4113 S.W. 109th, Seattle.

Whereas, it is deemed desirable and to the best interests of each of the respective parties hereto that the above-described property be sold free and clear of all claims, and that the rights, interests, and claims of each of the parties hereto attach to the proceeds of said sale or sales.

Now, Therefore, It Is Agreed on behalf of the respective parties hereto as follows:

I.

That the trustee in bankruptcy may dispose of the above-described property at public or private sale as directed by the Referee in Bankruptcy, each party hereto agreeing to cooperate in order to effectuate a sale, and to that end, agree to execute any instruments necessary for the transfer of the above-described property. It is agreed that the approval of any sale or sales by the referee in bankruptcy shall be binding upon all parties hereto. It is further agreed that the above-mentioned property may be sold by the trustee, free and clear of all liens, claims, interests, or rights in favor of any of the undersigned or their principals.

II.

The present right, title, interest, or claim, if any, of any or all of the undersigned, shall attach to the net proceeds of said sale or sales of said property, in the same manner and to the same extent as though said property or properties had not been converted into cash. The commingling of any such proceeds of

sale shall be without prejudice to the rights of any party hereto.

III.

The net proceeds of the sale or sales shall be deposited in a depository approved by the Referee in Bankruptcy, in the name of R. C. Nicholson, Trustee in the Estate of Fay J. Hansen, a bankrupt.

Dated at Seattle, Washington, this 26th day of November, 1948.

/s/ CARL JONSON,

One of the Attorneys for Ernest Jonson, Receiver of Vita-Pakt Associates, Inc.

/s/ WILLIAM J. WALSH, JR.

Attorney for R. C. Nicholson,
Trustee.

/s/ ALEX WILEY,

Attorney for Fay J. Hansen,
a Bankrupt.

Ernest Jonson, Receiver of Vita-Pakt Associates, Inc., is hereby authorized by and through his attorneys to enter into the foregoing stipulation.

.....,

Judge.

[Endorsed]: Filed November 29, 1948.

[Title of District Court and Cause.]

ANSWER OF ERNEST A. JONSON, RECEIVER OF VITA-PAKT ASSOCIATES, INC., TO PETITION AND ORDER TO SHOW CAUSE OF TRUSTEE OF ESTATE OF FAY J. HANSEN, BANKRUPT

Comes Now Ernest A. Jonson, Receiver of Vita-Pakt Associates, Inc., an insolvent corporation, by and through his attorneys, Johnson & Dafoe, and reserving his objections to the jurisdiction of the above-entitled court, and in response to the petition of the Trustee of the Estate of Fay J. Hansen, the above-named bankrupt, admits, denies and alleges as follows:

I.

Answering paragraph I thereof, respondent admits the same.

II.

Answering paragraph II thereof, respondent admits the same, except for that portion thereof alleging transfer therein referred to as having been made without any consideration therefor, which respondent denies.

III.

Answering paragraph III thereof, respondent admits the same.

IV.

Answering paragraph IV thereof, respondent de-

nies each and every allegation, matter and thing therein contained, except respondent admits that said transfer was made within one year prior to the filing of the petition in bankruptcy herein.

V.

Answering paragraph V thereof, respondent admits that all of the property, except as hereinafter described, the subject of said conveyance and transfer, was in the possession of the bankrupt at the time of his adjudication in bankruptcy and has been in possession of the Trustee of the Estate of said bankrupt; but alleges that the following described property was not in the possession of the said bankrupt at the time of filing said petition in bankruptcy, nor at the time of his aforesaid adjudication, nor has the same been in the possession of the Trustee:

Unimproved real estate in Seattle, King County, Washington, being Lot 1, Block 3, Arroyo Vista Addition.

Shares of stock in Vita-Pakt Associates, Inc.

Wherefore, respondent prays for an order and decree of the above-entitled Court as follows:

1. That the following property be adjudged and decreed to be subject to a trust and equitable lien in favor of respondent, senior and prior to the claims of the bankrupt, his creditors, and the trustee of the estate of said bankrupt, as follows:

To the extent of \$5500.00 in the residence property described as follows: Lot 22, Block 4 of Arroyo Vista, King County, Washington, known as 4113 S.W. 109th St., Seattle, Washington; and,

To the extent of \$350.00, more or less, in the aforesaid 1948 Oldsmobile automobile; and

To the extent of \$1500.00, more or less, in the aforesaid furniture, furnishings and fixtures located at the above residence.

2. That the aforesaid property be sold and said trust and equitable lien attach to the proceeds thereof and such proceeds to the extent of said trust and equitable lien be delivered by the trustee of the estate of said bankrupt to respondent.

3. That the balance of the proceeds or portion of said property remaining after adjudging of the aforesaid trust and equitable lien of respondent be apportioned and identified as to "exempt" and "non-exempt" property; and the non-exempt portion thereof be awarded to and retained by the trustee of the estate of said bankrupt.

4. That as to the exempt portion of said property or the proceeds thereof, an order be entered herein that the above-entitled court is without jurisdiction to determine conflicting claims thereto; that in the event the court assumes jurisdiction thereof, that the transfer thereof to respondent be confirmed and approved in all respects.

5. That an order and decree herein be entered that the above-entitled court is without jurisdiction to determine conflicting claims to the property hereafter described; that in any event it be decreed that the trustee of the estate of said bankrupt and said bankrupt have no title or interest in and to the following unimproved real property and personal property:

Lot 1, Block 3, Arroyo Vista, King County, Washington.

Shares of stock in Vita-Pakt Associates, Inc.

6. That the petition and prayer for relief of the petitioning trustee on file herein be dismissed with prejudice and without costs to respondent; that the said Order to Show Cause be dismissed and respondent discharged therefrom, and that respondent have, and receive his costs and disbursements herein to be taxed.

7. For such other and further relief in the premises as the Court may deem just and equitable.

/s/ JOHNSON & DAFOE,
Attorneys for Receiver.

Duly verified.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 7, 1948.

[Title of District Court and Cause.]

REPLY OF BANKRUPT TO AFFIRMATIVE
DEFENSES OF ERNEST A. JONSON

Comes now above-named bankrupt, and in reply to the Affirmative Defenses of Ernest A. Jonson, receiver, etc., denies each and every allegation contained therein, except those expressly admitted hereafter, to wit:

Admits the allegations of Paragraphs III and IV of said first affirmative defense.

As to said second affirmative defense, petitioner admits as follows:

That petitioner made an offer, which was accepted by said corporation, to turn over certain assets to said corporation, in return for which he was to receive 530 shares of the capital stock of said corporation, and said assets were in fact turned over to said corporation.

That said Elvin P. Carney did secure from petitioner and his wife certain deeds and bills of sale, as alleged in petitioner's petition herein, by threats of criminal prosecution, and extortion, without any consideration whatever.

That petitioner is the payee of the note described in Par. IX.

That said Ernest A. Jonson did enter into a certain stipulation with bankrupt and trustee herein, which is on file in this cause, upon authority granted him by the Superior Court of the State of Washington.

That petitioner and Rosemary A. Hansen are husband and wife.

Petitioner affirmatively alleges that the capital stock of said Vita-Pakt Associates, Inc., consisted of 1,000 shares, of which petitioner was the owner of 530 shares. That a total number of 790 shares of said stock was allotted by said corporation, which allotment included 530 shares belonging to petitioner. That 210 shares were not allotted, and were held as treasury stock by said corporation, and not sold or disposed of. That a total number of 615 shares of said stock were sold or otherwise disposed of; that of said number thus disposed of 355 shares were the property of petitioner. That the receipts for the sale of all of said stock were deposited in the bank account of the corporation subject to the right of petitioner to withdraw the proceeds of said sales of the stock belonging to him. That petitioner did withdraw from said funds a small portion of what belonged to him, to wit, the approximate sum of \$6,500.00, as shown exactly by the books of said corporation now in possession of said Jonson.

Wherefore, petitioner prays for the relief requested in his petition herein.

/s/ ALEX WILEY,

Attorney for Bankrupt.

Duly verified.

[Endorsed]: Filed December 8, 1948.

[Title of District Court and Cause.]

MEMORANDUM DECISION

During the last half of 1947 Fay J. Hansen and one Paul Shafer were co-partners engaged in selling orange juice and agreed between themselves that as of January 1, 1948, the partnership would be dissolved. Shafer would retire from the business and Hansen would convey the assets to a corporation to be formed. On January 5, 1948, Vita-Pakt Associates, Inc., was organized.

In the interest of brevity short names instead of full titles and initials will be used.

At the first meeting of directors Hansen subscribed to 530 shares of the 1000 shares of non-par stock of the corporation, and by resolution of the Board paid for the same by executing a bill of sale to the assets of the partnership, the corporation agreeing to pay the liabilities of the partnership.

There was a resolution that non-par common stock of the corporation be issued for for not less than \$100.00 per share. (Corporate Minute Book, Receiver's Ex. 2.)

There was no compliance with the Washington State Security Act, Remington's Revised Statutes 5853, and following sections, and there was no further resolution by the corporation for the sale of stock, nor indeed was a stock certificate issued to Hansen for the 530 shares of stock. Stock certificates were issued on regular printed forms and they were signed by the corporate officers, but the stubs

and other records of the company did not disclose against which stock the same should be charged or from which stock they were transferred.

Hansen was President and General Manager of the corporation and on the books of the corporation, under his direction, an account was set up designated "Capital Stock Sales" and also an account designated as "Fay J. Hansen Drawing Account" (Receiver's Ex. 27).

The books disclosed that 615 shares of stock were issued, 96 shares thereof as bonus stock and that total receipts from the sale of stock were \$51,900.00. There was paid to Hansen and charged to the "Fay J. Hansen Drawing Account" about \$16,298.71.

Hansen sold stock and procured loans for the corporation from a group of dentists and others by representing to them that a larger volume of orange juice was being sold than was in fact being sold; that the corporation was making a profit, whereas it was losing money and that it needed working capital to expand its business. All money so received by him was deposited in the corporation's bank account and he drew freely for his personal use and for payments upon his house, furniture and car from the corporation account because he said he felt that the money so deposited was for the sale of his stock and he, therefore, could have the company pay his personal bills from the proceeds of the sale of the stock. He knew the stock record was incomplete and irregular but said he expected some day to straighten it out.

Some of the groups of dentists who had bought stock and made loans to the company upon Hansen's misrepresentations became apprehensive and on July 24, 1948, employed an accountant to examine the books and by July 29, 1948, the accountant had reported to them and to the lawyer employed by them and the corporation that Hansen had gone into this venture without funds of his own; that all of the money he received was by borrowing from his friends or the sale of stock; that the corporation had never operated at a profit; that the volume of sales was less than 10% of that represented; that the corporation was and had been hopelessly insolvent and that Hansen was insolvent and was liable to creditors in large sums and was subject to criminal prosecution.

A conference was had between the lawyer, a representative of the dentists, the accountant and Hansen at which time it was pointed out that Hansen had violated the Securities Act of the State of Washington and was liable to prosecution therefor; that if he would turn over to the corporation everything he had it would make the stockholders feel better. From this statement Hansen inferred that if he turned over all his property to the corporation he might escape prosecution. At the suggestion of the conferees he went to his home, related to his wife what had happened and she believed that if she joined with him and executed the instruments demanded of Hansen he would not be prosecuted but that if she did not do so he would be arrested, jailed

and prosecuted. In this frame of mind they went to the meeting place and there executed

Bill of Sale to the Oldsmobile Sedan (Receiver's Ex. 21-A).

Quit-claim Deed to premises known as 4113 S.W. 109th St. (Receiver's Ex. 22-A).

Purchaser's Assignment of Real Estate Contract (Receiver's Ex. 23).

Bill of Sale to refrigerator and range and all other household property located at 4113 S.W. 109th St. (Receiver's Ex. 24).

Assignment of stock in Vita-Pakt Associates, Inc. (Receiver's Ex. 25).

On August 5, 1948, Hansen, upon his voluntary petition, was adjudged a bankrupt. In his schedules he recited that the foregoing instruments were executed under duress and claimed not specific property but the right to receive from the proceeds of the sale of the property, a sum of money equal to his statutory exemptions. The Trustee elected by the creditors filed his report allowing the exemptions and the Referee entered an order approving the same.

About ten days thereafter Ernest A. Jonson was appointed Receiver of the corporation in a winding-up proceeding in the Superior Court of King County.

Hansen initiated these proceedings by petition and order to show cause why his exemptions should

not be set over to him. The Trustee filed his petition and order to show cause seeking to void the above conveyances on several grounds. The Receiver appeared specially and objected to the jurisdiction of the Court. Since said time all of the parties have stipulated that the Trustee may sell the property and their liens and claims may be transferred to the proceeds, and the Trustee has, with their consent, accepted bids and is now perfecting title to close the sales.

The pleadings of the parties will be deemed amended to be claims by them to receive all or part of the proceeds of the sale to which the evidence discloses them entitled.

The hearing just concluded upon the issues made and tried extended over a number of days, 55 exhibits were introduced and oral argument was presented by all parties on two separate days. A part of the proceedings was not stenographically reported but a part was reported by Merritt G. Dyer, a part by Bernard Ayres and a part by E. E. Lescher.

The following Memoranda of Authorities and Briefs have been submitted by the parties:

Trustee's Trial Brief and Memoranda of Authorities—submitted by Barker & Day and William J. Walsh, Jr.

Bankrupt's Brief—submitted by Alex Wiley.

Receiver's Memorandum of Authorities—submitted by Johnson & Dafoe.

Receiver's Supplemental Memorandum of Authorities—submitted by Johnson & Dafoe.

Receiver's Second Supplemental Memorandum of Authorities—submitted by Johnson & Dafoe.

Trustee's Supplemental Trial Briefs and Memorandum of Authorities—submitted by Barker & Day and William J. Walsh, Jr.

Bankrupt's Reply Brief—submitted by Alex Wiley.

The written briefs cited 142 authorities to support their several and alternate contentions.

The Referee has considered each and all of the briefs and the authority therein cited but, for obvious reasons, will not undertake to show wherein the facts in the cited cases were different and that the cited cases are distinguishable from the case at bar. For instance, in certain cases the states in which the matter arose grant absolute exemptions to certain property without any procedure, whereas in this state there is no property which is exempt (except possibly wearing apparel) unless some procedure is had to claim the same, and all property is subject to exemptions under certain circumstances. (See Remington's Revised Statutes, Section 563). The subject matter of some of the cases was securities rather than physical property and, therefore, recording statutes have no application and some states have no recording statutes. Other cases were decided before the passage of the Chandler Act in

1938, which Act imposed stringent restrictions upon the establishment of secret liens in bankruptcy.

The Referee will not undertake to answer all of the contentions and alternate contentions of the several parties seriatim, but an effort will be made to indicate the basis in fact and law upon which the decision rests.

I.

Exemption

The contention of the Receiver that a Trustee in Bankruptcy cannot recover from anyone exempt property conveyed by the bankrupt for any purpose, because title to exempt property does not pass to the Trustee and he has no interest in exempt property finds support in the cases cited by him where the property conveyed was at the time exempt either by reason of the law of the situs or because the proper proceeding had been taken to declare it exempt, whereas, in the case at bar, upon the date of the conveyances no declaration of homestead had been filed, no proceeding had been taken to claim any property exempt and if the conveyances were in effect a preference the Trustee has the right to recover and make his own sale and account for the proceeds according to law.

Remington's Revised Statutes of Washington,
Sections 563, 637 and 552;

35 C. J. S. 138 and 155;

In re R. H. Elrod & Son, 215 Fed. 250;

Van Slyke v. Bumgarner, 177 Wash. 326;

1 Collier, 816;

4 Collier, 968 and 998.

II.

Consideration

The Referee proposed to each of the parties the following question and received their answers substantially as listed below:

“What was the consideration for the execution of the instruments of conveyance?”

The Bankrupt's answer was that they were executed under duress and, therefore, void.

The Trustee's answer was that they were for security of some kind and, therefore, voidable in bankruptcy.

The Receiver did not answer directly but from what he did say the Referee infers that his contention is that Hansen had wrongfully depleted the capital of the corporation and to right this wrong he should convey all of his property, but that a portion of the property was purchased in part by the company's money and hence Hansen was only trustee therefor and the conveyance as to that part would simply place the legal title with the equitable title.

The Referee finds, concludes and decides that the corporation took these conveyances as security at a time when it knew Hansen to be insolvent; that there was no present consideration and that

the property passed to the Trustee free of the lien sought to be created by the conveyances and the Trustee is free to attack them in these proceedings.

Section 60 of the Bankruptcy Act, (U. S. Code, Title 11, Chap. 6, Section 96) ;

Section 67 of the Bankruptcy Act, (U. S. Code, Title 11, Chap. 7, Section 107) ;

Vol. 3, Collier on Bankruptcy, 14 Ed., pages 975-982.

III.

Tracing Trust Funds

The receiver cites many cases in support of the contention that an officer of a corporation is a fiduciary officer and if he takes money belonging to the corporation and purchases property in his own name the corporation is the equitable owner thereof, and if he sells it a Court of equity would impress the transaction with a trust, forcing him to convey the property to the corporation or the proceeds received by him therefor. In that case to meet the demands of justice a court of equity will impress a trust *ex malificio*. There is no quarrel with that rule. 65 C. J. 224-225; *Tucker v. Brown*, 20 Wn. 2d 740.

The present contest in reality is between the creditors of the corporation and the creditors of Hansen. Both are innocent and, therefore, the recording statutes must be complied with and the burden of proof must be met by those who assert a trust.

The Receiver met the burden of proving that \$4,500.00 was taken out of the bank account of the corporation and paid to one Taylor for building a house for Hansen's personal use on real estate standing in his name, and other transactions were proven with like clarity. However, Hansen contended that his personally owned stock had been sold, the proceeds of those sales were placed in the corporation's bank account and, therefore, when he was taking the money from the bank account he was taking his own money.

The evidence is conclusive that a portion of Hansen's stock was sold and the proceeds thereof placed in the corporation's bank account. The evidence is incomplete as to the exact amount of Hansen's stock sold or the exact amount of the corporation's unissued capital stock sold. Therefore, the Receiver did not meet the burden of proving with clarity and certainty the amount of the Trust fund to begin with. Before there can be a tracing there must be an established fund. It may be that the Receiver is entitled to an accounting and that accounting may show an indebtedness against Hansen.

The failure of the Receiver to establish the amount of money in the corporate bank account belonging to Hansen also denies his claim to a lien of \$300.00 on the proceeds of the sale of the automobile and, furthermore, if he had a mortgage lien, or a mechanic's lien or any other kind of lien upon the personal property of Hansen the same is void

unless some public record is made thereof and the secret lien so claimed is void in bankruptcy.

Section 60 of the Bankruptcy Act, (U. S. Code, Title 11, Chap. 6, Section 96);

Section 67 of the Bankruptcy Act, (U. S. Code, Title 11, Chap. 7, Section 107);

Section 70 of the Bankruptcy Act, (U. S. Code, Title 11, Chap. 7, Section 110);

Vol. 3, Collier on Bankruptcy, 14 Ed., pages 975-982;

Tucker v. Brown, 20 Wn. 2d 740.

IV.

Election of Remedies

When the corporation exacted from Hansen and his wife a conveyance of Mrs. Hansen's separate property (Purchaser's Assignment of Real Estate Contract, Receiver's Ex. 23), title to the whole of the automobile, although its claim of lien through resulting trust was about 10% of its value, and all of the household furniture, whensoever and wheresoever purchased, it well knew that it was receiving title to property not purchased with corporate funds. The corporation, possessed of these facts, then and there made an election to take the position of a debtor and secure itself by these conveyances and forever estopped itself from asserting any right to impress a lien against, or title to, property as being purchased with its funds or the funds being traced into the property.

“A man shall not be allowed to approbate and reprobate.” 28 C. J. S., 1057.

See also 28 C. J. S. 1077 and 1095.

In *The Morris Plan, Industrial Bank vs. Schorn*, 52 A. B. R. NS 805, decided April 23, 1943, the Court said at page 808:

“Also in line is the well settled rule that property converted, embezzled, or otherwise taken by the bankrupt, or obtained by him by fraud, can be claimed from the bankrupt estate only so long as it can be definitely traced, with the consequence that an attempted repayment by the bankrupt prior to bankruptcy is a preference, except where made from the very property taken.” (Many cases cited.)

An order may be prepared, served and presented upon notice providing:

1. That the Receiver's special appearance is overruled and that his claim for any proceeds of the sale of property is denied upon the merits, but that this order is without prejudice to the right of the Receiver, or any other person, to file herein a general claim.

2. That when the order has been entered confirming the sale of the assets, the bankrupt may apply to this court for an order for payment to him in money of his claim of exemptions, but that this order is without prejudice to the receipt of further testimony to determine the origin or the

source of all the funds in the hands of the Trustee so as to determine the right to exemptions, such as the amount received over and above encumbrances and expenses from the sale of the household furniture and the car claimed as an in lieu exemption, etc., and without prejudice to the right of the Court to fix the amount of the costs of these proceedings and the cost of sale, to be charged to the Bankrupt and deducted from his exemptions.

Dated at Seattle, December 30, 1948.

/s/ VAN C. GRIFFIN,
Referee in Bankruptcy.

[Endorsed]: Filed December 30, 1948.

[Title of District Court and Cause.]

FINDINGS OF FACT ON ORDER TO SHOW
CAUSE OF HEARING

The above-entitled matter having come on duly before the undersigned Referee in Bankruptcy, on orders issued on the petitions of Fay J. Hansen, bankrupt herein, and of R. C. Nicholson, trustee in bankruptcy of above-entitled estate, directing Ernest A. Jonson, receiver of Vita-Pakt Associates, Inc., a corporation, to show cause, if any he had, why certain transfers and conveyances executed by said Hansen in favor of Vita-Pakt Associates,

Inc., a corporation, should not be adjudged to be void; bankrupt appearing in person and by Alex Wiley, his attorney, and the trustee appearing in person and by Barker and Day and William J. Walsh, Jr., his attorneys, and said receiver appearing specially and thereafter filing his answer by Johnson and Dafoe and Carl Jonson, his attorneys, and said matter having been continued from time to time, and evidence having been adduced on behalf of all parties, and the Court having heard and considered the arguments and briefs of counsel for all said parties,

Now, therefore, the Court finds the facts to be as follows:

I.

During the last half of 1947 bankrupt and one Paul Shafer were copartners engaged in selling orange juice. They agreed between themselves that as of January 1, 1948, the partnership would be dissolved; Shafer would retire from the business; and Hansen would convey the assets to a corporation to be formed. On February 5, 1948, Vita-Pakt Associates, Inc., was organized. At the first meeting of directors Hansen subscribed for 530 shares of the 1000 authorized shares of non-par value stock of the corporation; and offered in payment for said stock to turn over to said corporation all assets of said copartnership business. By resolution of the Board of Directors of said corporation said offer was accepted; said assets were delivered to said corporation; and said corporation assumed and

agreed to pay the liabilities of the copartnership. There was no further resolution by the corporation for the sale of stock; nor was a stock certificate issued to Hansen for the 530 shares of stock. Certificates for 615 shares of stock were issued and disposed of, for which was received the total sum of \$51,900.00. Stock certificates were issued on regular printed forms and they were signed by the corporate officers, but the stubs and other records of the corporation did not disclose against which stock the same should be charged or from which stock they were transferred. The records of said corporation show an allotment of 530 shares of its stock to Fay J. Hansen and 260 other shares of said stock, which allotment was dated and filed on June 25, 1948, in the office of the County Auditor of King County, Washington.

II.

Hansen was president and general manager of the corporation; and under his direction an account was set up designated "Capital Stock Sales" and also an account designated "Fay J. Hansen Drawing Account." Hansen sold stock and procured loans for the corporation. All money so received by him was deposited in the corporation's bank account; and he drew on said account some funds for his personal use. That in said "Fay J. Hansen Drawing Account" there was charged to said Hansen the total sum of \$16,657.71. That of said total the item, "E. E. Kohl, \$500.00," was an error, and

said charge should not have been made against Hansen.

III.

At the instance of a group of dentists who were stockholders, on July 24, 1948, an accountant was employed by the corporation to examine the corporate books and records. By July 29, 1948, Hansen had been told by the accountant that he had withdrawn money from the corporation without authority and said accountant had reported to said stockholders that said corporation had never operated at a profit; that said corporation was hopelessly insolvent; that Hansen was insolvent and was liable to creditors in large sums, and was subject to criminal prosecution. Hansen was summoned to the office of the lawyer for said stockholders, which meeting was attended by a representative of the said dentists, and the accountant, at which time Hansen was informed that he had violated the Securities Act of the State of Washington in failing to secure a permit to sell stock and was liable to criminal prosecution therefor; that if he would turn over to the corporation all the property of every kind that he owned, the stockholders would feel more kindly toward him. The lawyer for said stockholders insisted that he turn over all his property to the corporation, and told Hansen that as far as he (the lawyer) was concerned, the only thing that Hansen could do was to sign over everything he had. From these statements Hansen inferred that if he turned over all his property to the corporation he might

escape prosecution, but that otherwise criminal charges would be filed against him. At the request of said lawyer, Hansen went to his home, related to his wife what had happened as above set forth, and she believed that, if she joined with him and executed the instruments of conveyance demanded of Hansen, he would not be prosecuted, but that if she did not do so he would be arrested, jailed and prosecuted. When Hansen left the meeting to bring back his wife he believed that if he did not return someone would come out and get him.

IV.

In this frame of mind, Hansen and his wife returned to the office of the lawyer a short while after leaving same, and executed the following written instruments, to wit:

Bill of Sale to Oldsmobile sedan;

Quit-claim deed to premises known as 4113 S.W. 109th St.;

Purchaser's Assignment of Real Estate Contract;

Bill of Sale to refrigerator and range and all other household property located at 4113 S.W. 109th St.;

Assignment of stock in Vita-Pakt Associates, Inc. All of these instruments except the stock assignment were filed of record.

V.

On August 5, 1948, Hansen, upon his voluntary petition, was adjudged a bankrupt. In his schedules he recited that the foregoing instruments were executed under duress and were void. He claimed, not specific property but the right to receive from the proceeds of the sale of the property, a sum of money equal to his statutory exemptions. The trustee elected by the creditors filed his report allowing the exemptions and the Referee entered an order approving the same.

VI.

That at the time of his adjudication in bankruptcy Hansen had possession of all of said property covered by said conveyances, with the exception of the stock in Vita-Pakt Associates, Inc., and the purchaser's assignment of real estate contract, and thereafter delivered possession of all of said property, with said exceptions, to the trustee herein, who has ever since been in possession thereof.

VII.

On August 9, 1948, Ernest A. Jonson qualified as receiver of the said corporation, having been appointed receiver by the Superior Court of the State of Washington for King County, on petition of some of the stockholders and directors of said corporation. Said receiver paid \$320.00 on the mortgage indebtedness to preserve the asset mortgaged.

VIII.

Hansen initiated these proceedings by petition and order to show cause why said transfers to Vita-Pakt Associates, Inc., should not be adjudged void as to both the trustee herein and Hansen. The trustee also filed his petition and obtained the issuance of an order to show cause directed to said receiver seeking to have the said transfers voided as to the trustee. The receiver appeared specially and objected to the jurisdiction of the Court, and thereafter answered, reserving his objection to the jurisdiction of the Court. Thereafter all of the said parties have stipulated that the trustee may sell the said property covered by said instruments of conveyance; and their liens and claims, if any, might be transferred to the proceeds of said sales, all as more particularly shown in said stipulation; and the trustee has, with the consent of all parties, accepted bids and is now perfecting title to close said sales of all of said property.

IX.

The pleadings of the parties will be deemed amended to be claims by them to receive all or part of the proceeds of the said sales to which the evidence discloses them entitled; and be deemed to be amended to embrace a petition of the trustee that the Refere's Order approving the allowance of bankrupt's exemptions be reconsidered and said exemptions be disallowed.

X.

That at the time of the execution of said instruments of conveyance to said corporation Hansen had not filed any declaration of homestead as to any property whatsoever, and no proceedings or acts of any kind had been taken by Hansen to claim any property whatever as exempt.

XI.

That Vita-Pakt Associates, Inc., took said conveyances from Hansen and wife as security at a time when it knew Hansen to be insolvent; that there was no present consideration given for said conveyances. That said conveyances covered all property of every kind and nature then owned by Hansen and his wife, as said corporation then knew, and were executed within one week prior to Hansen's adjudication in bankruptcy. That at the time of the execution of said conveyances Hansen was indebted to various creditors to the total extent of several thousand dollars. That the effect of such transfers would be to enable said corporation to obtain a greater percentage of its alleged claim than any other creditor of the same class.

XII.

That of the 615 shares of stock in said corporation which were sold or otherwise disposed of, a substantial though undetermined portion thereof belonged to Hansen. That the funds received from the sale of Hansen's stock, though deposited in the

account of Vita-Pakt Associates, Inc., belonged to and remained the property of Hansen. The receiver has failed to prove the amount of Hansen's personal stock which was sold and the amount of the corporation's unissued capital stock sold. The receiver has failed to prove that any of the money withdrawn from the corporation's bank account by Hansen and used by him for his personal uses did in fact belong to said corporation. The receiver did not meet the burden of proving with clarity and certainty the existence of any trust fund with reference to said funds withdrawn by Hansen and the amount of any such trust fund. The receiver has failed to prove that a trust has been created with reference to any funds so withdrawn by Hansen.

XIII.

When the corporation exacted from Hansen and his wife a conveyance of what the receiver claims was Mrs. Hansen's separate property, title to the whole of the automobile although its claim of lien through resulting trust was about ten per cent of its value, and all of the household furniture, whensoever and wheresoever purchased, it well knew that it was receiving title to property not purchased with corporate funds. The corporation, possessed of these facts, then and there made an election to take the position of a creditor and secure itself by these conveyances, and forever estopped itself from asserting any right to impress a lien against, or title to, property as being purchased with its funds or the funds being traced into the property.

XIV.

That R. C. Nicholson is the duly elected, qualified and acting trustee of the above-entitled bankrupt estate.

Dated at Seattle, Washington, this 17th day of January, 1949.

/s/ VAN C. GRIFFIN,
Referee in Bankruptcy.

[Title of District Court and Cause.]

CONCLUSIONS OF LAW ON SHOW-CAUSE
HEARING

The above-entitled matter having come on duly before the undersigned Referee in Bankruptcy, on order issued on the petitions of Fay J. Hansen, bankrupt herein, and of R. G. Nicholson, trustee in bankruptcy of above-entitled estate, directing Ernest A. Jonson, receiver of Vita-Pakt Associates, Inc., a corporation, to show cause, if any he had, why certain transfers and conveyances executed by said Hansen in favor of said corporation, should not be adjudged to be void; bankrupt appearing in person and by Alex Wiley, his attorney, and the trustee appearing in person and by Barker and Day and William J. Walsh, Jr., his attorneys, and said receiver appearing in person and by Johnson and Dafoe and Carl Jonson, his attorneys, and evidence having been adduced on behalf of all parties, and

said matter having been continued from time to time, and the Court having heard and considered the arguments and briefs of counsel for all said parties, and having made and entered its findings of fact herein;

Now, therefore, from said findings of fact the Court concludes as a matter of law, as follows:

I.

That the special appearance of receiver Jonson should be overruled.

II.

That the transfers and conveyances as set forth in Paragraph IV of findings of fact herein are void.

III.

That said receiver is not entitled to any of the proceeds of the sale of said assets covered by said transfers except the sum of \$320.00 which he paid on the mortgage indebtedness, but his right to file a general claim herein is not prejudiced in any way.

IV.

That bankrupt is entitled to claim exemption in said proceeds of sales as provided by the laws of the State of Washington, without prejudice to the receipt of further testimony to determine the origin or source of all of the funds in the hands of the trustee so as to prevent bankrupt from obtaining exemption out of funds the source of which was not property subject to exemption, and without

prejudice to the right of the Court to fix the amount and portion of the costs of these proceedings and the costs of sale which may be charged to the bankrupt and deducted from his exemptions.

V.

That the petition of the Trustee to have the Referee's Order approving the allowance of the bankrupt's exemptions set aside should be denied.

Dated at Seattle, Washington, this 17th day of January, 1949.

/s/ VAN C. GRIFFIN,
Referee in Bankruptcy.

[Endorsed]: Filed January 17, 1949.

[Title of District Court and Cause.]

SUPPLEMENTAL ORDER ON SHOW-CAUSE
HEARING

The above-entitled matter having come on duly before the undersigned Referee in Bankruptcy, on motion of R. C. Nicholson, Trustee, and the Referee finding that the original Order on Show-Cause Hearing entered January 17, 1949, should be supplemented by adding thereto a further paragraph embracing the Referee's oral ruling that the Trustee's petition to set aside the bankrupt's exemptions should be denied, now, therefore, it is Ordered

I.

That the Order on Show-Cause Hearing entered herein January 17, 1949, be and the same is hereby supplemented by the addition of a paragraph numbered IV to read as follows:

The petition of the Trustee to have the Referee's Order Approving the Allowance of the bankrupt's exemptions set aside, is denied.

/s/ VAN C. GRIFFIN,
Referee in Bankruptcy.

Receipt of Copy acknowledged.

[Endorsed]: Filed February 11, 1949.

[Title of District Court and Cause.]

ORDER ON SHOW-CAUSE HEARING

The above-entitled matter having come on duly before the undersigned Referee in Bankruptcy, on orders issued on the petitions of Fay F. Hansen, bankrupt herein, and of R. C. Nicholson, trustee in bankruptcy of above-entitled estate, directing Ernest A. Johnson, receiver of Vita-Pakt Associates, Inc., a corporation, to show cause, if any he had, why certain transfers and conveyances executed by said Hansen in favor of Vita-Pakt Associates, Inc., a corporation, should not be adjudged to be void; bankrupt appearing in person and by Alex Wiley, his attorney, and the trustee appearing in person

and by Barker and Day and William J. Walsh, Jr., his attorneys, and said receiver appearing specially and thereafter answering in person and by Johnson and Dafoe and Carl Jonson, his attorneys, and evidence having been adduced on behalf of all parties, and said matter having been continued from time to time, and the Court having heard and considered the arguments and briefs of counsel for all said parties, and having heretofore made and entered its findings of fact and conclusions of law herein;

Now, therefore, it is hereby Ordered, Adjudged and Decreed as follows, to wit:

I.

That the following conveyances and transfers executed by bankrupt and his wife on July 29, 1948, in favor of Vita-Pakt Associates, Inc., a corporation, to wit:

Bill of Sale to Oldsmobile Sedan;

Quit-Claim Deed to premises known as 4113 S.W. 109th St.;

Purchaser's Assignment of Real Estate Contract;

Bill of Sale to refrigerator and range and all other household property located at 4113 S.W. 109th St. (which written instruments are filed as exhibits herein).

are Void; and that all of said property covered by such conveyances passed to the trustee herein, free

of any right, title, interest or lien sought to be created by said conveyances in favor of Vita-Pakt Associates, Inc., a corporation, and/or Ernest A. Jonson, receiver of said corporation, subject to bankrupt's right to claim exemption therein.

II.

That the special appearance made herein by said receiver is overruled; and that the claim of said receiver to any proceeds of the sale of any of said property is Denied upon the merits, except that said receiver is entitled to the sum of Three Hundred Twenty (\$320.00) Dollars out of the proceeds of the sale of the real property known as 4113 S.W. 109th St., Seattle, Wash.; but that this order is without prejudice to the right of the receiver, or any other person, to file herein a general claim against the above-entitled estate.

III.

That when the order has been entered herein confirming the sale of the said assets, the bankrupt may apply to this Court for an order for payment to him in money of his claim of exemptions, but that this order is without prejudice to the receipt of further testimony to determine the origin or source of all the funds in the hands of the trustee so as to determine the right to exemptions, such as the amount received over and above encumbrances and expenses from the sale of the house-

hold furniture and the car claimed as an in-lieu exemption, and without prejudice to the right of the Court to fix the amount and portion of the costs of these proceedings and the costs of sale which may be charged to the bankrupt and deducted from his exemptions.

Dated at Seattle, Washington, this 17th day of January, 1949.

/s/ VAN C. GRIFFIN,
Referee in Bankruptcy.

[Endorsed]: Filed January 17, 1949.

[Title of District Court and Cause.]

MOTION FOR SUPPLEMENTAL ORDER ON
SHOW-CAUSE HEARING

Comes now R. C. Nicholson, Trustee herein, by and through his attorney, William J. Walsh, Jr., and respectfully shows to the Court:

I.

That after a hearing, the Referee in Bankruptcy entered his Findings of Fact, Conclusions of Law, and Order on Show-Cause Hearing on January 17, 1949.

II.

That said Findings of Fact in Paragraph IX thereof recite that the pleadings of the parties will be deemed to be amended to embrace the Trustee's petition that the allowance of the bankrupt's exemption be reconsidered and disallowed.

III.

That said Conclusions of Law in Paragraph V thereof recite that the petition of Trustee to have the Order Approving the Allowance of the bankrupt's exemptions set aside is denied.

IV.

That no reference is made in the Order on Show-Cause Hearing to the effect that said petition was denied.

Wherefore, R. C. Nicholson, through his attorney, prays that for the purpose of perfecting the record and pleadings upon review, a Supplemental Order on Show-Cause Hearing be entered embracing the denial of the Trustee's petition in conformity with the Referee's oral ruling.

/s/ WILLIAM J. WALSH, JR.,
Attorney for R. C. Nicholson,
Trustee.

[Endorsed]: Filed February 9, 1949.

[Title of District Court and Cause.]

OBJECTIONS OF BANKRUPT TO FINDINGS
OF FACT, CONCLUSIONS OF LAW, AND
ORDER PROPOSED BY TRUSTEE AND
RECEIVER

Comes now the bankrupt and objects to the Findings of Fact and Conclusions of Law and Order on Petition for Review proposed by the trustee in bankruptcy and the receiver of Vita-Pakt Associates, Inc., on the following grounds:

1. That all of the Findings of Fact of the Referee in Bankruptcy are supported by substantial evidence; and none of said Findings of Fact is clearly erroneous.

2. Bankrupt objects to this Court making Findings of Fact on issues not presented in any testimony before this Court and not supported by any evidence in the record certified to this Court by the Referee in Bankruptcy, because such Findings are not supported by any evidence.

3. Bankrupt objects to this Court picking and choosing bits of evidence in order to make Findings of Fact contrary to those of the Referee, because the Referee heard all the witnesses on all the issues and this Court did not.

4. Bankrupt objects to this Court making Findings of Fact based on any testimony given before this Court in this case, because this action did not present a situation authorizing this Court to call

witnesses and hear testimony; and because the bankrupt was entitled to have the petition for review heard on the record certified to this court by the Referee in bankruptcy.

5. That no petition for review of the Supplemental Order entered by the Referee in Bankruptcy on February 11, 1949, has ever been filed; and said Order has become a final order of this Court; and the question of bankrupt's exemptions has been determined and adjudicated by said Order, and the Order of the Referee of October 20, 1948.

6. That the Order Approving Bankrupt's Exemptions was entered by the Referee in Bankruptcy on October 20, 1948, and became res adjudicata as to said rights of exemption because no objection had been filed to trustee's report allowing said exemptions within the time allowed by law, and because no petition for the review of said Order of October 20, 1948, has ever been filed.

7. That the receiver of Vita-Pakt Associates, Inc., has failed to file any proof of claim as a creditor, secured or otherwise, against the above-named estate; and by reason thereof said receiver can have no valid claim to any assets of said estate in the possession of the trustee herein.

/s/ ALEX WILEY,
Attorney for Bankrupt.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 7, 1949. .

[Title of District Court and Cause.]

BANKRUPT'S ADDITIONAL OBJECTIONS
TO PROPOSED FINDINGS AND ORDER

Bankrupt hereby makes additional objections to the Findings of Fact, Conclusions of Law, and Order which the receiver and trustee have proposed herein, as follows:

I.

Objects to setting aside or vacating the order of the Referee in Bankruptcy herein, on the ground that such action is unauthorized in law, and is contrary to the law and all the evidence in the case, and that there is no evidence to sustain or warrant such order.

II.

Objects to the proposed finding of the Court that the transfers from bankrupt to Vita-Pakt Associates, Inc., were made voluntarily, and not under duress, because there is no evidence to sustain such finding.

III.

Objects to the finding of the Court that the transfers by bankrupt to Vita-Pakt Associates, Inc., were not made as security, because there is no evidence to sustain such a finding.

IV.

Objects to the finding that bankrupt misappropriated and used for his personal benefit the sum

of \$16,157.71 of the funds of Vita-Pakt Associates, Inc., because such finding is contrary to the law and all the evidence in the case.

V.

Objects to the finding that bankrupt misappropriated the sum of \$5,897.00 of the funds of said corporation and that such sum has been traced into the purchase of a house and car by bankrupt because there was no evidence to sustain such a finding, and there was no evidence that said funds did not belong to bankrupt instead of to said corporation.

/s/ ALEX WILEY,
Attorney for Bankrupt.

[Endorsed]: Filed October 17, 1949.

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above matter having come on duly before the undersigned, one of the judges of the above-entitled Court, on Petition for Review from the order herein of Van C. Griffin, Referee in Bankruptcy, of Ernest A. Jonson, Receiver of Vita-Pakt Associates, Inc., an insolvent corporation, and R. C. Nicholson, Trustee of the estate of the above-

named bankrupt; and Van C. Griffin, Referee in Bankruptcy, having duly and regularly filed the Referee's Certificate on Review and the respective parties hereto having duly and regularly filed their respective memoranda of points on review and answers and replies thereto; and the cause having come on regularly for hearing on said Petition for Review on the 13th day of May, 1949, the above-named bankrupt appearing by Alex Wiley, the said Trustee appearing by Barker & Day (William J. Walsh, Jr. of counsel) and the said Ernest A. Jonson, Receiver, appearing by Johnson & Dafoe (Carl A. Jonson of counsel); the Court having heard the respective arguments of counsel, and the Court having read and examined the Transcript of Testimony and Summary of Unreported Testimony taken before said Van S. Griffin, Referee in Bankruptcy, and having fully examined the records and files herein; and the Court having on its own motion called witnesses and taken additional testimony herein on the 25th and 26th days of August, 1949, and on October 17, 1949, and the Court being fully advised in the premises,

Now, Therefore, the Court makes the following

Findings of Fact

I.

That on August 5, 1948, Fay J. Hansen, the above-named bankrupt, on his voluntary petition, was adjudged a bankrupt. That thereafter R. C.

Nicholson was duly elected and qualified as trustee of the bankrupt estate of Fay J. Hansen, and has been ever since and now is the duly qualified and acting trustee of said estate. That before said Petition in Bankruptcy was filed the bankrupt had possession of the following described property:

1948 Oldsmobile automobile;

Residence property commonly known as 4113 S. W. 109th Street, Seattle, Washington, described as follows: Lot 22 Block 4, Arroyo Vista, Seattle, King County, Washington;

Unimproved real property described as follows: Lot 1 Block 3, Arroyo Vista, Seattle, King County, Washington;

Electric refrigerator and range and all household furnishings and personal property located at 4113 S. W. 109th Street, Seattle, Washington.

II.

That Vita-Pakt Associates, Inc., an insolvent corporation, was incorporated under the laws of the State of Washington as of February 4, 1948. That on August 4, 1948, Ernest A. Jonson was appointed temporary receiver of said corporation, said appointment being made permanent on August 9, 1948, and said Ernest A. Jonson qualified as such receiver and has been and now is the duly qualified and acting receiver of said corporation. That said corporation succeeded to the business and property of a partnership in which Fay J. Hansen, bank-

rupt, and one Paul Shafer were co-partners. That Fay J. Hansen promoted and organized the corporation, and he, his wife, Rosemary Hansen, and Thomas Todd, were the incorporators and first officers and directors. Fay J. Hansen served as Director, President and General Manager of the corporation and Rosemary Hansen served as Director and Secretary-Treasurer of the corporation, until July 29, 1948; Todd served as a director and first vice-president and was succeeded by one Dr. H. J. Burkhart.

That the authorized capital stock of the corporation was 1,000 shares of no par value. That pursuant to proceedings duly had, the Board of Directors of said corporation fixed a value of \$100.00 per share and authorized the sale of the stock of the corporation at that price. That at or prior to the formation of the corporation, Hansen offered to transfer the assets of said co-partnership, subject to the liabilities thereof, to the corporation for 530 shares of stock; that said offer was accepted by the corporation by formal resolution. That said partnership was insolvent prior to the date of its dissolution on December 31, 1947. That no shares of stock were issued to Hansen save one qualifying share which was subsequently transferred to Dr. Burkhart.

IV.

That Fay J. Hansen dominated, controlled and managed the affairs of the corporation. That during the transactions hereinafter mentioned, no

formal action of the Board of Directors and no affirmative vote of the stockholders was taken with respect thereto, nor was any meeting held of the Board of Directors or of the stockholders which authorized, either directly or indirectly, the transactions hereinafter set forth. That Hansen controlled the books of the corporation, directed the opening entries, received the money for the sale of stock, caused the shares to be transferred, made the loans hereinafter detailed and performed the actions hereinafter stated on his own initiative and without the consent of the Board of Directors and/or the stockholders of the corporation.

V.

That prior and subsequent to incorporation, Hansen as President and General Manager of the corporation, sold 519 shares of the capital stock of the corporation to various buyers for a cash consideration of \$51,900.00; that during said time, an additional 96 shares were donated to various individuals by Hansen as bonus shares. That during said time, Hansen borrowed money from stockholders and others on behalf of the corporation; that all moneys received from the sale of corporation stock were credited to the capital stock account appearing on the books of the corporation, and moneys received from the sale of the capital stock of the corporation were property of the corporation; that all moneys received from loans obtained by Hansen, acting on behalf of the corporation, were for the corpora-

tion's benefit, were its property and were entered in the corporation books of account. That all funds received from the sale of stock and from loans were deposited in the corporation bank account.

VI.

That prior and subsequent to incorporation, to on or about July 29, 1948, Hansen sold stock and obtained loans as hereinabove set forth; that to induce individuals to purchase stock and loan money to the corporation, Hansen represented to them that the corporation was solvent; that it was operating and maintaining its business on a profitable basis, and that its financial affairs were in order; that Hansen was drawing only a salary of \$100.00 per week from the business; that all funds received from the sale of stock and from loans were needed for corporation purposes and working capital and would be used only for such purposes; that said representations were made to said prospective stockholders and lenders of money during the course of negotiations concerning the sale of stock and loans of money, and were relied upon by them and induced them to purchase stock and/or loan money to the corporation. That said representations were false representations of material facts and were made by Hansen to induce said individuals to buy stock and lend money to the corporation, and were known by Hansen at the time to be false and untrue.

VII.

That Hansen withdrew corporation funds from its bank account and appropriated for his personal use, without authorization of the Board of Directors or stockholders, and without their individual or collective knowledge or consent of Fay J. Hansen and his wife, the sum of \$16,157.71, as set forth in detail in the Fay J. Hansen drawing account set up on the books of the corporation. That of said funds so unlawfully misappropriated by Hansen, the receiver of the corporation traced \$5,897.00 of the same into property purchased by Hansen, and in his possession at the time of the filing of his petition in bankruptcy. That the finding of the sum of \$16,157.71 in this finding VII shall not be res adjudicata as to any claim filed by the receiver.

VIII.

That on or about July 24, 1948, a small group of stockholders employed a lawyer and an accountant to investigate the affairs of the corporation; that said investigation for the first time disclosed the fact that Hansen had made unlawful appropriation of corporate funds in the sum above stated, and further disclosed the fact to be that the corporation was insolvent, and that it had not operated at a profit during any period of its existence. That said investigation disclosed the fact that of such funds in the sum of \$16,157.71, the following moneys were appropriated by Hansen and were used by him for his own purposes as follows:

That on or about March 16, 1948, Hansen executed and caused to be delivered to himself a corporation check No. 595 in the sum of \$1100.00 drawn on the corporation bank account and payable to himself.

That said check was deposited in his own personal bank account at the Seattle First National Bank (Broadway Branch) and thereafter his personal check in the sum of \$1,000.00, payable to Herbert U. Taylor, was charged against said account; that said account at said time consisted principally of corporation funds in excess of \$1000.00. The said Herbert U. Taylor was the vendor of the residence then being purchased by Hansen, being premises known as 4113 S. W. 109th Street, Seattle, Washington, described as follows: Lot 22, Block 4, Arroyo Vista Addition to Seattle, King County, Washington.

That thereafter, and on June 30, 1948, at a time when the corporation bank account was overdrawn, Hansen caused to be deposited therein funds borrowed on behalf of the corporation from stockholders, in the sum of \$5,000.00, and on the same day Hansen caused to be issued by said bank a cashier's check No. 92058 in the sum of \$4500.00, which sum was charged against the corporation bank account. Said cashier's check was made payable to H. Taylor, who was the vendor of the above-mentioned residence, and the total of said payments, being \$5500.00, was applied by said Hansen and Taylor on the purchase price thereof.

That on April 15, 1948, when the credit balance in Hansen's personal bank account consisted solely of corporation checks drawn and charged against the corporation bank account and deposited in his personal bank account, Hansen withdrew therefrom by check the sum of \$397.00 which was paid to Central Oldsmobile Company as part of the purchase price of Hansen's personal automobile.

IX.

That on or about July 29, 1948, a conference was had by and between the attorney and accountant employed by the small group of stockholders, and Fay J. Hansen, at which conference the affairs of the corporation were discussed in detail. The representations Hansen made to the stockholders and his unlawful appropriation of the corporation funds and the manner in which the same were spent, were discussed. At such conference it was suggested to Hansen that the stockholders of the corporation would feel more kindly toward Hansen and wife in the event they would transfer all of their property to the corporation. That Hansen left the conference and voluntarily returned with his wife; that Hansen and his wife, at the request of the attorney and accountant, voluntarily executed documents transferring all of their property to the corporation as follows:

Bill of Sale to 1948 Oldsmobile automobile;

Quitclaim deed to residence property being premises commonly known as 4113 S. W. 109th

Street, described as follows: Lot 22 Block 4, Arroyo Vista, Seattle, King County, Washington;

Purchasers' Assignment of Real Estate Contract covering unimproved real property described as follows: Lot 1, Block 3, Arroyo Vista, Seattle, King County, Washington;

Bill of Sale to shares of stock in Vita-Pakt Associates, Inc.;

Bill of sale to electric refrigerator and range and all other household furnishings and personal property located at 4113 S. W. 109th Street.

That said conveyances and transfers were voluntarily made on their part and pursuant to the moral and legal obligations of Hansen to return to the corporation property purchased with corporation funds and otherwise make restitution to the corporation. Said conveyances and transfers were not secured by threat of criminal prosecution nor promise that Hansen would escape prosecution if the same were made. Said conveyances and transfers were not induced by threats or coercion of representatives of the corporation or of any other person but were made at the request of representatives of the small group of stockholders of the corporation for the benefit of all stockholders. That said conveyances and transfers to the corporation were not made at the request of the corporation or its representatives, but were made at the request of representatives of a small group of stockholders.

The corporation or its agents never made a demand on the Hansens to do anything. That the Hansens did not meet the burden of proof that the transfers and conveyances were obtained under duress.

X.

That by virtue of the conveyance to the corporation of the real property commonly known as 4113 S. W. 109th Street, above described and by transfer of the Oldsmobile automobile, the corporation received property which in part had been purchased with its funds which were traced by the receiver from the corporation bank account as above set forth. That said property to the extent of said \$5500.00 in the residence property and said \$397.00 in the Oldsmobile automobile was at all times property of the insolvent corporation and was at no time the property of Fay J. Hansen, or of the bankruptcy estate of Fay J. Hansen.

XI.

That on August 5, 1948, Hansen on his voluntary petition was adjudged a bankrupt. In his schedules he recited that the foregoing instruments and conveyances were void and executed under duress and claimed statutory exemption in the property thereby conveyed. The trustee elected by the creditors and Hansen filed a petition for and an order to show cause was issued directed to Ernest A. Jonson, receiver of Vita-Pakt Associates, Inc., to appear and show cause why said conveyances were not void. That by stipulation by all parties hereto the sale of said real and personal property has

heretofore been effected. That during the pendency of this proceeding and prior thereto, the receiver of the insolvent corporation paid the sum of \$320.00 on the principal and interest of the mortgage due on the real property commonly known as 4113 S. W. 109th Street, the Hansen residence, to preserve the same, and that this sum has been repaid to the receiver by the trustee of the estate of Fay J. Hansen, Bankrupt.

XII.

That the corporate receiver did not adequately trace corporate funds, if such they were, in the amount of \$72.50 into a vacuum cleaner purchased by the bankrupt from Ernst Hardware Company, on \$500.00 allegedly loaned by the bankrupt from corporate funds to one, Robert Shaffer, and evidenced by a promissory note executed by said Robert Shaffer to Fay J. Hansen personally, or into any other assets of the bankrupt estate.

XIII.

During the pendency of these proceedings and pursuant to stipulation by all parties hereto, a sale of the real and personal property scheduled and inventoried in bankrupt's estate was authorized to be made by the Trustee under the direction and subject to the approval of the Referee in Bankruptcy. The sale of these properties has been effected by the Trustee, and the net proceeds thereof deposited in the Trustee's bank account.

XIV.

That at the time of the transfer and conveyance of these properties to Vita-Pakt Associates, Inc., Hansen had not filed any declaration of homestead as to any property whatsoever, and no proceedings or acts of any kind had been taken by Hansen to claim any property whatever as exempt.

XV.

That Hansens voluntarily transferred and conveyed the afore-described property to the insolvent corporation; that they voluntarily chose to make such transfers and conveyances of property which they might otherwise have been able to claim as exempt; that said transfers and conveyances of said property were made within four months of the filing of the petition in bankruptcy by Hansen, and at a time when he was insolvent; that there was no present consideration for the making of said transfers or conveyances, and at the time the same were made, the corporation knew Hansen to be insolvent; that the effect of said transfers and conveyances was to enable the corporation to obtain a greater percentage of the amount owed by Hansen than others of the same class; that said transfers and conveyances, except to the extent of the funds therein as traced by the receiver, consisting of the aforementioned \$5500.00 in the residence and \$397.00 in the automobile, constituted a preference in favor of the corporation, voidable by the trustee of the estate of Fay J. Hansen, Bankrupt.

XVI.

That said transfers and conveyances were not made nor given as security of any kind nor did the same constitute a general assignment for the benefit of Hansen's creditors; that the same were made for the sole benefit of the corporation at a time when Hansen had other creditors; that the value of the property transferred and conveyed did not exceed the obligation owed Hansen by the corporation.

XVII.

October 20, 1948, the Trustee recommended and the Referee signed the Order Approving Trustee's Report of Exemptions; the exemptions allowed were those claimed by the bankrupt in his schedules, to wit: \$4000.00 from the proceeds of the sale of Lot 22, Block 4, Arroyo Vista, pursuant to claim of homestead filed by the bankrupt August 4, 1949; \$500.00 in lieu of household furniture and furnishings; and \$250.00 in lieu of other personal properties that might have been claimed. These exemptions were asked to be paid in cash from the proceeds of the property transferred to the corporation, which property had not at the time of the allowance of exemptions been sold and reduced to cash.

XVIII.

More than ten days after the entry of the order allowing the bankrupt's exemption and during the pendency of the show cause hearing to set aside the transfers and conveyances to the corporation, the Trustee moved orally to amend his Petition on the

order to show cause to embrace a further petition that the Referee's "Order Approving the Trustee's Report of Exemptions" be reconsidered and the exemptions be disallowed. No rights had intervened and the bankrupt did not have possession of the exempt property during the interval between the entry of the Referee's original Order allowing the exemptions and the making of the petition to vacate said order.

XIX.

The Referee permitted the oral amendment, reconsidered and re-examined the merits of his original order of October 20, 1948, and thereafter denied the Trustee's petition to set aside the Referee's previous order approving the allowance of the bankrupt's exemptions.

XX.

That this Court of its own motion disallows the bankrupt's exemptions, and vacates the Referee's Order Approving the Trustee's Report of Exemptions dated October 20, 1948.

XXI.

That the amounts herein awarded to the Receiver should be subject to the proportionate share of costs of sale of the property into which the same were traced. That the allocation by the Trustee of the sum of \$19,584.03 as the price received from the sale of the Hansen residence property is just and reasonable; that the equity therein of Fay J. Hansen is the sum of \$8157.50. That the follow-

ing expenses of sale were reasonable and necessary expenses:

Title Insurance Policy	\$ 63.75
Federal and State documentary stamps...	42.00
Filing Fee—Recording Deed .....	.45
Real Estate Commission.....	1,000.00
	<hr/>
	\$1,106.20

That the amount herein awarded to the Receiver from the proceeds of the sale of said house; namely, \$5,500.00, is 67.3% of said equity, and said sum is subject to 67.3% of the aforementioned costs of sale, or a total of \$741.15. That the equity of Fay J. Hansen in the said 1948 Oldsmobile was \$528.49; that storage charges pending sale were incurred in the sum of \$59.20; that the amount herein awarded to the Receiver from the proceeds of sale of the said automobile; namely, \$397.00, is 75.4% of the equity of Fay J. Hansen in said automobile and is subject to 75.4% of the costs of sale, or a total of \$44.40.

XXII.

That in addition to the aforementioned costs of sale, the amount herein awarded to Receiver should be subject to a further charge for reasonable attorneys' fee to be awarded as a special attorneys' fees to Barker & Day and William J. Walsh, Jr., attorneys for the Trustee, for services rendered in connection with the sale of the aforesaid Hansen residence and automobile; that Van C. Griffin, Referee in Bankruptcy, has found that the sum of

\$400.00 is a fair and reasonable amount to be awarded to said attorneys as special attorneys' fees and that said sum shall be allocated and borne as follows:

For services in connection with sale of automobile, the sum of \$40.00. By receiver, \$30.00.

For services in connection with sale of said residence, the sum of \$360.00. By receiver, \$241.20.

Done in Open Court this 1st day of November, 1949.

/s/ LLOYD L. BLACK,
Judge.

From the foregoing Findings of Fact, the Court now makes the following:

Conclusions of Law

I.

That this Court has jurisdiction of the subject matter and all the parties to this cause and the Order of the Referee in Bankruptcy overruling the special appearance of Ernest A. Jonson, Receiver of Vita-Pakt Associates, Inc., is affirmed.

II.

That the Findings of Fact of Van C. Griffin, Referee in Bankruptcy, entered in the above-entitled cause on the 17th day of January, 1949, to the extent that the same are inconsistent with the

Findings of Fact hereinabove made, are not supported by the evidence and are clearly erroneous and contrary to the law and evidence herein; that the Conclusions of Law entered simultaneously therewith are clearly erroneous and contrary to the law and the evidence herein; that the Order on show cause hearing of the said Van C. Griffin, Referee in Bankruptcy, is clearly erroneous and contrary to law and is not supported by his Findings of Fact and Conclusions of Law of this Court.

III.

That Ernest A. Jonson, receiver of Vita-Pakt Associates, Inc., an insolvent corporation, is entitled to receive the following amount from the funds on hand derived from the proceeds of the sale of the real and personal property herein mentioned:

\$5500.00 from the proceeds of the sale of the residence of Fay J. Hansen, commonly known as 4113 S. W. 109th Street, described as follows: Lot 22, Block 4, Arroyo Vista, Seattle, King County, Washington;

\$397.00 from the proceeds of the sale of that certain Oldsmobile automobile, the personal vehicle of Fay J. Hansen, Bankrupt.

That said funds constitute a first and prior lien against the proceeds of the sale of the above-described property in the hands of the Trustee of the Estate of Fay J. Hansen, Bankrupt, prior to the claims of said Trustee and any creditors of said

bankrupt, subject only to a charge in the sum of \$785.55 to be deducted by and retained by the Trustee as the reasonable proportionate share of the costs of sale of said property to be borne by said receiver, and subject to the further charge in the sum of \$271.20 to be deducted therefrom as a special attorneys' fee to be awarded to the attorneys for the trustee; that the balance of said proceeds in the sum of \$4840.25 for the receiver shall not otherwise be subject to any charges and/or expenses of any kind in this proceeding or any other proceedings in the matter of the estate of Fay J. Hansen, Bankrupt.

IV.

That the transfers and conveyances to Vita-Pakt Associates, Inc., as hereinbefore set forth (except as to the extent of the part thereof into which the Receiver of Vita-Pakt Associates, Inc., traced corporation funds in the total amount of \$5897.00); namely

Lot 22, Block 4, Arroyo Vista, King County, Washington;

Bankrupt's equity in Lot 1, Block 3, Arroyo Vista, King County, Washington;

Household furniture and furnishings formerly situate at 4113 S. W. 109th Street;

1948 Oldsmobile automobile;

were made at a time when no part of said properties had been claimed exempt and constituted a

voluntary preferential transfer by the bankrupt which was not made by way of security. Said transfers and conveyances prohibit the allowance of the bankrupt's claim to exemptions out of the property so transferred, and which was recovered for the benefit of the creditors by the Trustee, under the express terms of Section 6 of the Bankruptcy Act.

V.

That the Referee in Bankruptcy, having entertained and considered the Trustee's "Petition to Reconsider and Set Aside the Referee's Original Order Approving Trustee's Report of Exemptions dated October 20, 1948," should have vacated said Order, and denied the Bankrupt's claim to exemptions.

VI.

That this Court has the power to and should set aside the Referee's Order Approving Report of Trustee's Exemptions dated October 20, 1948, and of its own motion itself deny the Bankrupt his exemptions.

VII.

That the Trustee of the Estate of Fay J. Hansen, Bankrupt, is entitled to receive and retain the remainder of the proceeds from the sale of the assets of the bankrupt estate after deducting therefrom the aforesaid amounts to be paid Ernest A. Jonson, Receiver; and that the bankrupt and his wife are not entitled to an exemption or exemp-

tions from said proceeds, or from any other asset of the bankrupt estate.

VIII.

That except as herein otherwise specifically provided, neither party is entitled to recover costs or disbursements in this proceeding.

IX.

That the awards herein made and to be entered in favor of Ernest A. Jonson, receiver of Vita-Pakt Associates, Inc., should be without prejudice to the right, if any, of said receiver to file a general claim against the estate of Fay J. Hansen, bankrupt, for the balance of such funds as receiver may claim as an indebtedness due from said bankrupt.

Done in Open Court this 1st day of November, 1949.

/s/ LLOYD L. BLACK,
Judge.

Approved as to form:

/s/ WILLIAM J. WALSH, JR.,
Attorney for Trustee.

/s/ CARL A. JONSON,
Attorneys for Receiver.

Receipt of copy acknowledged.

[Endorsed]: Filed November 1, 1949.

[Title of District Court and Cause.]

ORDER ON PETITION TO REVIEW

The above matter having come on duly before the undersigned, one of the judges of the above-entitled Court, on Petition for Review from the order of Van C. Griffin, Referee in Bankruptcy, entered on January 17, 1949, of Ernest A. Jonson, Receiver of Vita-Pakt Associates, Inc., an insolvent corporation, and of R. C. Nicholson, Trustee of the estate of the above-named bankrupt; and Van C. Griffin, Referee in Bankruptcy, having duly and regularly filed the Referee's Certificate on Review and the respective parties hereto having duly and regularly filed their respective memorandums of points on review and answers and replies thereto, and the cause having come on regularly for hearing on said Petition for Review on the 13th day of May, 1949, the bankrupt being represented by Alex Wiley, the Trustee being represented by Barker & Day (William J. Walsh, Jr., of counsel) and the said Ernest A. Jonson, Receiver, being represented by Johnson & Dafoe (Carl A. Jonson of counsel); the court having heard the respective arguments of counsel, and the Court having read and examined the Transcript of Testimony and Summary of Unreported Testimony taken before said Van C. Griffin, Referee in Bankruptcy, and having fully examined the records and files herein, and the Court having taken additional testimony herein on the 25th and 26th days of August, 1949, and on October 17, 1949, and having jurisdiction of the subject matter and parties to this cause

and having heretofore made and entered its Findings of Fact and Conclusions of Law herein, now therefore

It Is Hereby Ordered, Adjudged and Decreed that the special appearance of Ernest A. Jonson, Receiver of Vita-Pakt Associates, Inc., be and the same is hereby overruled; and

It Is Further Ordered, Adjudged and Decreed that the Order of Van C. Griffin, Referee in Bankruptcy, entered herein on January 17, 1949, be and the same is hereby reversed except as to that portion relating to the special appearance of the said Ernest A. Jonson; and

It Is Further Ordered, Adjudged and Decreed that Ernest A. Jonson, Receiver of Vita-Pakt Associates, Inc., an insolvent corporation, be and he is hereby awarded the sum of \$5897.00 from the proceeds of the sale of the following real and personal property of Fay J. Hansen, Bankrupt:

Residence of Fay J. Hansen, commonly known as 4113 S. W. 109th Street, described as follows: Lot 22, Block 4, Arroyo Vista, Seattle, King County, Washington;

One certain Oldsmobile automobile, the personal vehicle of Fay J. Hansen, bankrupt, in the hands of R. C. Nicholson, Trustee of the Estate of Fay J. Hansen, Bankrupt, pursuant to stipulation on file herein, representing the proceeds of property of Vita-Pakt Associates, Inc., a corporation, in the hands of said trustee, free and clear of any right, title, interest or lien or claim of any

kind of said R. C. Nicholson, Trustee of the estate of Fay J. Hansen, Bankrupt, and of Fay J. Hansen and his wife, and said sum is hereby established as a first and prior lien against the aforesaid proceeds in the hands of the said Trustee, subject only to reduction therefrom as follows:

The sum of \$741.15 costs of sale of said real property and the sum of \$44.40 costs of sale of said automobile, together with the sum of \$271.20 as a special attorneys' fee for the attorneys for the trustee in connection with the sale of said property; that the balance of the award to said Receiver, namely, the sum of \$4840.25, be and the same is hereby awarded to him without further charge of any kind for expenses of administration in the above-entitled bankruptcy proceedings, or any other costs and expenses of any kind in these proceedings or any other proceedings in said bankruptcy; and

It Is Further Ordered, Adjudged and Decreed that to the extent of the proceeds of property above described not otherwise determined to be the property of Vita-Pakt Associates, Inc., the conveyance and transfer of said property, as evidenced by documents executed by Fay J. Hansen, bankrupt, and wife, on July 29, 1948, constituted a preference of Vita-Pakt Associates, Inc., voidable by R. C. Nicholson, Trustee of the Estate of Fay J. Hansen, bankrupt herein, and said remaining property and proceeds thereof passed to R. C. Nicholson, Trustee herein, together with that certain promissory note executed by Robert Shafer, payable to Fay

J. Hansen, and together with the certain vacuum cleaner in possession of said Trustee, and the same is hereby awarded to him free of any right, title, interest or lien sought to be created in favor of Vita-Pakt Associates, Inc., an insolvent corporation and/or Ernest A. Jonson, Receiver of said corporation, and free of any right, title, interest and/or lien and/or claim of exemption of said Fay J. Hansen, bankrupt, or his wife; and

It Is Further Ordered, Adjudged and Decreed that this decree shall be without prejudice to the right, if any, of Ernest A. Jonson, Receiver of Vita-Pakt Associates, Inc., an insolvent corporation, to file within the time and in the manner provided by law, a general claim against the estate of Fay J. Hansen, bankrupt, in such amounts which are surrendered by the aforesaid Receiver to the aforesaid Trustee as a result of this Decree; and

It Is Further Ordered, Adjudged and Decreed that the Order of Van C. Griffin, Referee in Bankruptcy, approving and allowing certain exemptions to the Bankrupt, be and the same is hereby vacated and the claim of Fay J. Hansen, Bankrupt, to exemptions be and the same is hereby denied; and

It Is Further Ordered, Adjudged and Decreed that the costs of sale in the sum of \$785.55 charged against the amount herein awarded to the Receiver of Vita-Pakt Associates, Inc., be and the same shall be retained by R. C. Nicholson as Trustee of the estate of Fay J. Hansen, Bankrupt, as reimburse-

ment to said estate for the proportionate share of costs of sale of said Receiver as advanced by said estate, and the attorneys for said trustee are hereby awarded the sum of \$400.00 as special attorneys fees in connection with the sale of the real and personal property hereinabove described, to be paid to them at the time and in the manner as determined by Van C. Griffin, Referee in Bankruptcy; and

It Is Further Ordered, Adjudged and Decreed that each party hereto shall bear its own costs and disbursements herein except as otherwise specifically provided; and

It Is Further Ordered, Adjudged and Decreed that this cause be and the same is hereby remanded to Van C. Griffin, Referee in Bankruptcy, for such further proceedings as are necessary to be had in said cause not inconsistent with the terms of this Order.

Done in Open Court this 1st day of November, 1949.

/s/ LLOYD L. BLACK,
Judge.

Approved as to form:

/s/ CARL A. JONSON,
Of Attorneys for Receiver.

/s/ WILLIAM J. WALSH, JR.,
Attorney for Trustee.

Receipt of Copy acknowledged.

[Endorsed]: Filed November 1, 1949.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes now the bankrupt in the above-entitled cause, and moves the Court for a new trial herein for the following causes materially affecting the substantial rights of bankrupt:

I.

Irregularities in the proceedings of the Court by which bankrupt was prevented from having a fair trial.

II.

Insufficiency of the evidence to justify the decision. There was no evidence herein or inference from any evidence sufficient to justify:

1. Reversing or setting aside the Order of the Referee which was being reviewed herein, as such Order was not clearly erroneous, and there was ample and substantial evidence to sustain such Order.

2. The denial to the bankrupt of his statutory exemptions.

3. The award to the receiver of Vita-Pakt Associates, Inc., of any of the property or funds in the hands of the trustee.

4. The finding that all the funds obtained from the sale of the corporation stock of Vita-Pakt Associates, Inc., was the property of said corporation,

because the undisputed evidence proved that bankrupt owned a substantial part of said funds.

5. The finding that the transfers of property made by bankrupt and his wife to Vita-Pakt Associates, Inc., were made voluntarily and not under duress, because all the evidence proved said transfers were obtained by duress under threat of criminal prosecution.

6. The finding that the transfers by bankrupt to Vita-Pakt Associates, Inc., were not made by way of security, because the undisputed testimony proved otherwise.

III.

Errors in law occurring at the trial as follows:

1. The refusal of the Court to hold that the allowance of exemptions to bankrupt was *res judicata*.

2. The vacating of the Order of the Referee in Bankruptcy approving the trustee's Order allowing exemptions to bankrupt.

3. Denial of exemptions to the bankrupt.

4. The refusal of the Court to hold as valid the Supplemental Order of the Referee in Bankruptcy dated February 11, 1949, denying trustee's Petition to Set Aside the Order Approving the Allowance of Exemptions to Bankrupt, when no petition to review said Supplemental Order was ever filed.

5. The refusal of the Court to find that the re-

ceiver of Vita-Pakt Associates, Inc., has failed to file any proof of claim in above bankruptcy proceedings, and can have no valid claim to any of the funds in the hands of the trustee herein.

6. The calling of witnesses by the Court on his own motion when such action was not warranted by any circumstance in the case, and under such conditions that no party hereto considered it wise or proper to cross-examine said witnesses; and the hearing by the Court of only parts of the evidence on some of the issues involved, and picking and choosing bits of evidence in order to make Findings of Fact contrary to those of the Referee.

This motion is based upon the records and files herein, and the evidence submitted in said cause.

/s/ ALEX WILEY,
Attorney for Bankrupt.

Receipt of Copy acknowledged.

[Endorsed]: Filed November 10, 1949.

[Title of District Court and Cause.]

ORDER DENYING NEW TRIAL

Be It Remembered, this matter having come on regularly to be heard in open court on December 12, 1949, before the undersigned Judge of the above-entitled Court, upon the motion on file herein of Fay J. Hansen, bankrupt, for new trial; the bank-

rupt appearing by his attorney, Alex Wiley, the trustee of the estate of Fay J. Hansen, bankrupt, appearing by his attorneys Barker & Day (William J. Walsh, Jr., of counsel), and Ernest A. Jonson, receiver of Vita-Pakt Associates, Inc., an insolvent corporation, appearing by his attorneys, Johnson & Dafoe (Carl A. Jonson, of counsel); and the Court having heard and considered the arguments of counsel for the respective parties hereto and being full advised in the premises, Now, Therefore,

It Is Hereby Ordered that the motion of Fay J. Hansen, bankrupt, for new trial be and the same is hereby overruled and a new trial is hereby denied; and,

It Is Further Ordered that the exception of Fay J. Hansen, bankrupt, to this order be and the same is hereby allowed.

Done in Open Court this 16th day of December, 1949.

/s/ LLOYD L. BLACK,
Judge.

Presented by:

/s/ CARL A. JONSON,
Of Johnson & Dafoe, Attorneys for Receiver of
Vita-Pakt Associates, Inc.

Approved by:

/s/ WILLIAM J. WALSH, JR.,
Of Barker & Day, Attorneys for Trustee of the Es-
tate of Fay J. Hansen, Bankrupt.

Approved as to form:

/s/ ALEX WILEY,
Attorney for Bankrupt.

[Endorsed]: Filed December 16, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Fay J. Hansen, Bankrupt above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the following parts of the Order on Petition to Review and Final Judgment entered in this action on November 1, 1949, to wit:

That part of said Order which reversed the Order of Van C. Griffin, Referee in Bankruptcy, allowing bankrupt his claimed exemptions.

That part of said Order which decreed that the bankrupt's property and the proceeds thereof were awarded to the trustee in bankruptcy herein free of any claim of exemptions of bankrupt.

That part of said Order which provided that the Order of the Referee in Bankruptcy allowing exemptions to bankrupt be vacated.

That part of said Order which denied bankrupt's claim to exemptions.

/s/ ALEX WILEY,
Attorney for Appellant
Fay J. Hansen.

[Endorsed]: Filed January 10, 1950.

[Title of District Court and Cause.]

AMENDED AND SUPPLEMENTAL
NOTICE OF APPEAL

Notice is hereby given that Fay J. Hansen, bankrupt above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order on Petition to Review and Final Judgment, and each and every part thereof, which was entered in this action on November 1, 1949.

/s/ ALEX WILEY,
Attorney for Appellant
Fay J. Hansen.

[Endorsed]: Filed January 14, 1950.

In the District Court of the United States for the
Western District of Washington, Northern Division

In Bankruptcy No. 37835

In the Matter of
FAY J. HANSEN,

Bankrupt.

TRANSCRIPT OF THE PROCEEDINGS

Be It Remembered, that the above-entitled matter came on for hearing on the 29th day of No-

vember, 1948, beginning at the hour of 3:30 o'clock p.m., before The Honorable Van C. Griffin, Referee in Bankruptcy, at 600 United States Court House, Seattle, Washington.

WILLIAM J. WALSH, JR., ESQ., of
BARKER & DAY,

Appearing for R. C. Nicholson, Trustee;

CARL A. JONSON, of
JOHNSON & DAFOE,

Appearing for Ernest A. Jonson, Receiver
of Vita-Pakt Associates, Inc., a Corporation;

ALEX WYLIE, ESQ.,

Appearing for Fay J. Hansen, Bankrupt.

(Whereupon, the following proceedings were had and testimony taken to wit:)

(Papers presented to the Referee.)

FAY J. HANSEN

a witness called on behalf of the bankrupt, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Wiley:

Q. Your name is Fay J. Hansen?

A. That is right.

(Testimony of Fay J. Hansen.)

Q. You are the bankrupt in this action?

A. That's right.

Q. Do you recall the occasion when in Mr. Carney's office you executed certain deeds and bills of sale? A. That is right.

Q. What did those cover?

A. Well, they covered an automobile, a house and furniture, and a lot. That's it.

Q. And that was to the Vita-Pakt Associates?

A. That is right.

Q. Do you remember when you executed those documents?

A. Well, it was one morning but the date of it I can't remember offhand. It was—well, I can't remember exactly the day because Mr. Carney took me to lunch.

Q. I am asking you the date now.

A. I can't remember that.

Mr. Wiley (Addressing Mr. Jonson): Will you admit that it was on July 29th?

Mr. Jonson: Yes.

Q. (By Mr. Wiley): Now, tell the Court the circumstances under which you executed those documents.

A. Well, I went to Mr. Carney's office as per Mr. Jonson's invitation and when I got down there we discussed the situation and—

Q. Well, now, tell us what was said—who was present?

A. Well, it was Mr. Carney, Mr. Jonson—I

(Testimony of Fay J. Hansen.)

can't think of his first name, but Mr. Jonson there, anyway—and at that time there was a discussion as to money that had been spent for other things in Vita-Pakt and I, at that time, told them that was my own stock that was sold. And then this stock deal was brought up and Mr. Carney said—of course, it had been brought out before at a previous meeting that we didn't have a license to sell stock and so he brought out that it was definitely a criminal offense.

Q. What was a criminal offense?

A. For selling stock without a permit. And he told me that in order for these stockholders to feel kinder towards us that he wanted me to go get my wife and come back to his office and sign over the property, all of our personal property—I mean all of our property, both real and all that, the house, lot, and a car, and everything in order that the stockholders would feel kinder towards me.

And I don't know exactly the particular words I used, but I asked him something to the effect, "Supposing if I didn't?" And he said, "Well, you go out and get your wife and get back here before noon or we will come out and get you and have you arrested," and at—"Or we will come out and get you." And so I called her—he said I would have to sign over the property in order to keep from being arrested.

And I called my wife from his office and—not that office we were in, but from the office right out-

(Testimony of Fay J. Hansen.)

side, and I told her to be ready, that I was coming out to get her, and that I wanted her to come in town with me. And I went out and got her and come back in.

Q. What did you tell your wife when you got her to bring her into town?

A. I told her we had to sign over our property to Vita-Pakt in order to keep from being arrested because they were going to have us arrested that afternoon if we didn't.

And so I brought her down there. We came in the office and we got back before noon and Mr. Carney, I believe, was dictating, or in preparation of dictating, to his girl there the deeds and etc. and, also, Dr. Burkhart and Dr. Dougherty were on their way from their offices to Mr. Carney's office, and we waited until they got there to execute these—this paper work, at which time we signed over the car, the house, the furniture, the lot, and we signed over our stock. And I gave up my office at Vita-Pakt. I resigned as president of the corporation.

Q. Did you have any other property at that time? A. No.

Q. Besides what you signed over? A. No.

Q. Did Mr. Carney know what property you had? Did he inquire from you as to what property you had? A. That is right.

Q. Then what did you tell him?

A. I told him what we had, and even to the lot that my wife had bought herself prior to us being

(Testimony of Fay J. Hansen.)

married. We had made payments on it after we were married.

Q. Did you owe any other debts, any debts of any kind at that time—or I might state this: Did you owe the debts that are listed in the bankruptcy proceeding at that time? A. That's right.

Q. Well, did Mr. Carney say anything about your owing Vita-Pakt any money?

A. Well, both Mr. Carney and Mr. Jonson brought out the fact that this drawing account of mine on the company books showed so much money drawn out, and I told them that that was my—money that—I explained the situation to them, why it was done that way, and so on, and so forth. And I also explained to them the manner in which we issued the stock, and I also explained to Mr. Jonson, the Auditor, when he first audited the books, the way the stock was issued, and the manner in which it was issued. And so——

Q. Well, was anything said about a jail sentence or criminal prosecution?

A. Yes, the fact that we went ahead and sold stock without a permit.

Q. Were you accused of any other crime except that of selling stock without a permit?

A. No.

Q. And what was your purpose in executing these transfers, then, at that time in Mr. Carney's office? Why did you do it?

A. Well, I did not want to go to jail, for one

(Testimony of Fay J. Hansen.)

reason, and that's the reason and the only reason, as far as that is concerned.

Q. Didn't you talk to Dr. Burkhart at the time you signed these?

A. No. At the time we signed this paper work, I asked Dr. Dougherty—I directed a question to him similar to this: I asked Dr. Dougherty, "Do you feel it necessary that we have to sign this car over?"

Mr. Jonson: Objection, if Your Honor please.

The Referee: I beg your pardon?

Mr. Jonson: I object if he is going to say what Mr. Dougherty said.

The Referee: In Mr. Carney's presence?

The Witness: Yes, in Mr. Carney's presence.

The Referee: You may answer.

A. He said I should definitely sign it over, that the people would feel much kinder toward you if you did.

Q. Was Dr. Dougherty a stockholder in Vita-Pakt Associates? A. That is right.

Q. And then you left, and you got your wife?

A. No. The paper work wasn't all drawn up yet, and as long as we had given everything to Vita-Pakt, except about \$5.31 which we had in our pockets, Mr. Carney took us all to lunch, and after lunch we came back and finished signing the paper work.

Q. How long was it from the time they first

(Testimony of Fay J. Hansen.)

asked you to make this transfer until you brought your wife up there and signed?

A. About an hour, I imagine, elapsed—well, no, maybe—it takes about twenty minutes or thirty minutes to go from Mr. Carney's office to the house and back and I was probably in Mr. Carney's office approximately twenty or thirty minutes prior to that.

Q. Did Mrs. Hansen ask Mr. Carney anything about why she had to sign that over?

A. No, I don't believe so. She was just present there. She was also present in the office when I spoke to Dr. Dougherty about the car situation.

* * *

Cross-Examination

By Mr. Jonson:

Q. They did not mention that?

A. No. I explained to them that so much of that stock was mine, and so much of it was corporation stock.

Q. You may recall in your prior testimony at the creditor's hearing here that you did not tell the stockholders that it was your stock. Do you recall that?

A. I don't think—that is right. I never made any distinction to the stockholders, whether it was Vita-Pakt stock or "Joe Blow" stock, as far as that is concerned.

Q. Except for bonus stock?

(Testimony of Fay J. Hansen.)

A. Yes, bonus stock I told them would be my own stock.

Q. So, they could then believe that the other stock was corporation stock?

A. No, that wasn't the intention of it at all. The question had been brought up by several people, "How come Joe gets bonus stock and I don't?" And I explained it to them, that was my stock, that the stock is strictly \$100 a share and it didn't make any difference who bought it or what it was all about, it was still \$100 a share and the bonus was coming out of my own and not company stock and it was my own affair and I could give it to whomever I wanted. But, to be sure, we sat down a sort of regulation and I did it that way and I stuck to it.

Q. Now, did they also mention the fact that you had misrepresented to the doctors the earning capacity and the financial condition of this company?

A. No. The financial condition of the company was known by Dr. Burkhart.

Q. Did Mr. Carney and Mr. Jonson talk to you about that?

A. I don't recall anything about the financial condition of the company. The financial condition of the company was no secret to anybody anyway.

Q. Did Mr. Carney and Mr. Jonson talk to you about that? That is my question.

A. Not that I know of.

(Testimony of Fay J. Hansen.)

Q. Did they at any prior meeting at which Mr. Jonson or Mr. Carney was present?

A. The only prior meeting at which the two were present, and at which I was also present, was on a Saturday morning in my office there at the Vita-Pakt plant and that meeting was when I told a group of these stockholders whom I had appointed as an advisory committee to work with me on the situation the actual facts of the corporation.

Q. And was Mr. Jonson and Mr. Carney then present?

A. They came after part of the meeting. I believe Mr. Carney came first and Mr. Jonson second.

* * *

Q. (By Mr. Jonson): This meeting on the Saturday you referred to, where Mr. Jonson and Mr. Carney were present, was any discussion had at that time as to representations you had made with respect to the earning capacity of the company and what the actual earning capacity was?

A. There—there was something brought up but I can't remember exactly what the whole thing was on that.

Q. Could it have been brought out that you had represented to the stockholders that there was a production of some five to seven hundred gallons of orange juice a day when, as a matter of fact, it was only about two hundred gallons?

A. That could have been brought out.

Q. And at that time you admitted the discrep-

(Testimony of Fay J. Hansen.)

ancy between your representations to the stockholders and the actual facts? In other words, you admitted that you represented to the stockholders that the production was five or seven hundred gallons of orange juice a day and that, therefore, a substantial profit was made when, as a matter of fact, it was two hundred and the corporation was showing a loss?

A. I believe there was something to that effect, yes.

Q. That was correct. So to get back to the meeting, when you told Mr. Carney and Mr. Johnson about the fact that this stock was your stock, didn't they then tell you, "Well, how can you say that when you told the doctors that you were selling corporation stock and that the purpose was——"

A. I never told anybody what stock was going to be sold.

Q. All right. Did you tell them what the proceeds would be used for?

A. No, not all of them. In some cases, yes.

Q. What did you tell them?

A. I told them in some cases there—we had a meeting there, and a few days prior to this, and sold \$4,700 worth of stock and I told them that we had to have the money for the corporation.

Q. For the corporation?

A. That's right. There was \$4,000 worth of stock, I believe, sold there at that meeting—something like that.

(Testimony of Fay J. Hansen.)

Q. How do you distinguish among the various shares of stock that were sold? What was your stock and what was the corporation stock?

A. Well, the corporation had so much stock that belonged to it and that's the way it was kept. There was a sheet kept and our stock books were kept up as to which stock was which. And there were little initials put there, for instance, bonus share came out of this. I believe that was the way it was kept track of.

Q. What was done with the proceeds of this stock after you sold it?

A. It went into the corporation.

Q. And it was used in the corporation business?

A. That's right.

Q. So then if your particular stock were sold, you didn't receive the proceeds?

A. No, the stock—this is a breakdown on the stock roughly, as best I can remember it right now, and it was brought out at the first stockholders' meeting. We never had a real official stockholders' meeting.

When I speak of meetings, stockholders were there, more than ten or fifteen stockholders, and the breakdown was given to them. There was roughly to be approximately around sixty-nine or seventy-nine thousand dollars' worth of stock to be sold and issued in all, of which a certain portion of that was mine and a certain portion of that was Vita-Pakt's.

(Testimony of Fay J. Hansen.)

Q. And how was that identified as yours?

A. Well, in the Minutes of the Corporation the original thing there showed how many shares of stock would be Vita-Pakt's and how many shares of stock would be mine and, also, I will go on and finish there. There was supposed to have been something like twenty-one or thirty-one \$100 worth of stock that was not to be issued or sold at this time at all and it was to be held not as treasury stock but just unissued stock.

* * *

Mr. Jonson: Will you mark this?

The Referee: That will be Receiver's Exhibit Number 2 for identification.

(Exhibit referred to marked Receiver's Exhibit Number 2 for identification.)

The Referee: I guess we will number these consecutively.

That is the corporate book there and the Minutes and so forth?

Mr. Jonson: Yes, sir.

The Referee: That is Number 2.

And the Capital Books—are these all Capital Stock Books?

Mr. Jonson: Yes, sir.

The Referee: They will be 3, 4, 5, and 6 for identification.

(Exhibits referred to marked Receiver's Exhibits 3, 4, 5 and 6 for identification.)

(Testimony of Fay J. Hansen.)

Mr. Jonson: Here is one more, Your Honor.

The Referee: That will be Exhibit 7.

(Exhibit referred to marked Receiver's Exhibit Number 7 for identification.)

Q. (By Mr. Jonson): Now, handing you what has been marked as Receiver's Exhibit 2, I will ask you if that is the Minute Book that you just were referring to in connection with starting the corporation? A. That is right.

Mr. Jonson: Do you have any objection to their being admitted in evidence?

Mr. Wiley: I have no objection.

The Referee: If there is no objection, they will all be admitted.

(Documents heretofore marked Receiver's Exhibits 1 to 7, inclusive, were received in evidence.)

(Testimony of Fay J. Hansen.)

RECEIVER'S EXHIBIT No. 1

Individual or Corporation Financial Statement
(Short Form)

Name: Vita-Pakt Associates, Inc.,
Address: 2710-12 2nd Ave., Seattle, Wash.
To The Bank of California, N. A.

Date: July 22, 1948.

For the purpose of obtaining advances from time to time on bills, notes and other commercial paper signed or endorsed by the undersigned, and of obtaining credit generally, the undersigned makes the following statement of financial condition as of the close of business on the _____ day of _____ 19____, and certifies to the above-named bank that the information hereinafter set forth is in all respects true, accurate and complete and correctly reflects the financial condition of the undersigned on the date aforementioned.

(Fill all blanks, writing "no" or "none" where necessary to complete information.)

Assets	Liabilities
Cash on hand and in banks	Notes payable to banks (see schedule)
Notes receivable	Notes payable to others (see schedule)
Accounts receivable	Accounts payable (see schedule)
Merchandise	Taxes due
Life insurance—cash surrender value	Rent due
Securities (see schedule)	Loans against life insurance
Other current assets (itemize)	Accrued expenses
Real estate (see schedule)	Chattel mortgages
Machinery, furniture and fixtures	Real estate mortgages
Prepaid expenses—lease deposits	Reserves (itemize)
Other assets (itemize)—lease improvements	Other liabilities (itemize)
Total	Total liabilities
	Net worth (if not incorporated)
	Capital stock (if incorporated)
	Common 1,000 shares \$100. par.
	Surplus 470 shares surplus and to be sold.

(Testimony of Fay J. Hansen.)

Vita-Pakt Associates, Inc.

2710-2nd Ave. - Seattle 1, Wash.

Phone ELliott 6044

Distributors of

Vita-Pakt Brand Fresh Orange Juice

July 22, 1948

Cost Analysis

	Qts.	Pts.	½ Pts.
Juice—Cost plus freight.....	.1665	.0832	.0416
Bottles—Cost plus freight.....	.0337	.0228	.0165
Caps—Cost plus freight.....	.0028	.0028	.0028
Packing Cases—Cost plus freight.....	.0086	.0045	.0002
	<hr/>	<hr/>	<hr/>
	.2116	.1133	.0611

Profit Analyzed—Basis 500 Gallons Daily

500 Qts. — 1000 Pts. — 500 ½ Pts.

	Qts.	Pts.	½ Pts.
Sales Price .....	.35	.18	.10
Cost .....	.2116	.1133	.0611
	<hr/>	<hr/>	<hr/>
Gross Profit .....	.1384	.0667	.0389
Daily Output	500	1000	500
	<hr/>	<hr/>	<hr/>
Total Daily Gross Profit	\$69.20	\$66.70	\$19.45
		<hr/>	
		\$155.35	
Daily Average Expense		129.80	
		<hr/>	
Daily Net Profit		\$ 25.55	

(Testimony of Fay J. Hansen.)

July 7, 1948

Average Monthly Expenses

Rent—Building	\$345.00
Lease Juice Extracting Machines	600.00
Heat (average winter time—\$31.93)	15.00
Light (average winter time—\$22.56)	15.00
Telephone	70.55
Water (3 mos. average)	2.33
Towel & Uniform Service	11.13
Gas—Trucks	100.00
Industrial Insur. & Med. Aid	39.00
Shop Expense (Supplies)	20.00
Office Expense (Supplies)	10.00
	<hr/>
Total.....	\$1228.01

Taxes

F.O.A.B.—Employer—1% of wages	\$24.96
State & Fed. Unempl. Tax—3% of wages	74.88
City Bus. Tax—.001 of sales	
(on sales \$20,000.00)	20.00
State Excise Tax—.0025 of sales	
(on sales \$20,000.00)	50.00
City Personal Property Tax .....	.....
	<hr/>
Total.....	\$ 169.84

Wages

R. Shafer	\$73.50 per wk.	\$318.50 per mo.
Tony Koch	68.50 per wk.	296.83 per mo.
Glenn Johnson	68.50 per wk.	296.83 per mo.
Dick Lindberg	68.50 per wk.	296.83 per mo.
John Bisig	68.50 per wk.	296.83 per mo.
Dick Shafer	68.50 per wk.	296.83 per mo.
Eve Johnson	58.50 per wk.	253.50 per mo.
Fay Hansen	100.00 per wk.	440.00 per mo.
	<hr/>	
Total.....		\$2496.15
		<hr/>
Total.....		\$3894.00
Daily average		\$ 129.80

Admitted.

(Testimony of Fay J. Hansen.)

RECEIVER'S EXHIBIT No. 2

Vita-Pakt Associates Incorporated
Stock Subscription

The undersigned herewith subscribes to 530 shares of the no par value common stock of Vita-Pakt Associates, Incorporated, a Washington corporation, and in consideration of the issuance thereof offers to transfer to the corporation the following:

All of the business presently operated as Vita-Pakt Associates at 2710 Second Avenue, Seattle, Washington, which includes, among other assets, the bank account, petty cash, inventory, accounts receivable, equipment and trucks, furniture and fixtures, lease improvements, prepaid lease on juice extracting machine, prepaid rent on the building at the above address, prepaid insurance, goodwill and all other assets of the business of whatsoever kind of nature and where situated, subject to the assumption by the corporation of contracts payable and any other liabilities of the business as presently operated by the undersigned.

Dated this 4th day of February, 1948.

/s/ FAY. J. HANSEN.

The above subscription is consented to.

/s/ ROSEMARY A. HANSEN.

(Testimony of Fay J. Hansen.)

Receiver's Exhibit No. 2—(Continued)

Vita-Pakt Associates Incorporated
Stock Subscription

The undersigned herewith subscribe to the number of shares of stock of Vita-Pakt Associates, Incorporated, a Washington corporation, for the considerations set forth below:

Name	No. of Shares	Consideration
Rosemary A. Hansen	1	\$100.00
Thomas Todd	1	\$100.00

Dated this 4th day of February, 1948.

/s/ ROSEMARY A. HANSEN.

/s/ THOMAS TODD.

The undersigned herewith assign the above subscription to Fay J. Hansen who assumes liability thereon by acceptance.

/s/ ROSEMARY A. HANSEN.

/s/ THOMAS TODD.

Accepted:

/s/ FAY J. HANSEN.

(Testimony of Fay J. Hansen.)

Receiver's Exhibit No. 2—(Continued)

By-Laws of
Vita-Pakt Associates, Incorporated

Article III.

Stock

1. Certificates of stock shall be issued in numerical order, and each shareholder shall be entitled to a certificate signed by the President or Vice-President and the Treasurer or Secretary certifying to the number of shares owned by him.

2. Transfers of stock shall be made only upon the transfer books of the corporation, kept at the office of the corporation, and before new certificates are issued the old certificate shall be surrendered for cancellation.

3. Registered shareholders only shall be entitled to be treated by the corporation as the holders in fact of the stock standing in their respective names, and the corporation shall not be bound to recognize any equitable or other claim to or interest in any share on the part of any other person, whether or not it shall have express or other notice thereof, except as expressly provided by the laws of the State of Washington.

4. In case of loss or destruction of any certificate of stock, another may be issued in its place upon proof of such loss or destruction, and upon

(Testimony of Fay J. Hansen.)

Receiver's Exhibit No. 2—(Continued)

the giving of a satisfactory bond of indemnity to the corporation in such sum as the Board of Directors may provide.

Vita-Pakt Associates, Incorporated

Minutes of First Meeting of Board of Directors

Pursuant to waiver of notice the first meeting of board of directors of the above corporation was held at 682 Dexter Horton Building, Seattle, Washington, on the 10th day of February, 1948, at 1 p.m. o'clock. All of the directors attended.

Fay J. Hansen was elected chairman of the meeting and Thomas Todd was elected secretary thereof.

On motion duly made and seconded the action of the incorporators in filing the Articles of Incorporation and approving the By-Laws was ratified and confirmed.

On motion duly made and seconded the following were successively elected as officers of the corporation: Fay J. Hansen, President, and Rosemary A. Hansen, Secretary-Treasurer.

On motion duly made and seconded the following resolution was adopted:

“Resolved that the Bank of California, Seattle Branch, be the depository for the funds of the corporation and that the officers of the corporation be authorized and directed to execute the bank's printed forms showing the authorization of either of the officers of the cor-

(Testimony of Fay J. Hansen.)

Receiver's Exhibit No. 2—(Continued)

poration to sign checks and to borrow funds on behalf of the corporation. Be it also resolved that upon the execution of such forms copies thereof be placed in the Minute Book of the corporation.”

On motion duly made and seconded it was

“Resolved that the no par common stock of the corporation be issued for money or other consideration of a value of \$100.00 per share.”

After a discussion of the stock subscription of Fay J. Hansen for 530 shares, during which the assets, good will and earning capacity of the business were discussed, it was

“Resolved that the subscription of Fay J. Hansen be accepted and that appropriate stock certificates be issued upon receipt of a bill of sale from Fay J. Hansen approved by Rosemary A. Hansen, his wife, including a transfer of the assets in question and it was also resolved that upon receipt of such bill of sale the corporation accept the liabilities set forth in the subscription.”

There being no further business the meeting was adjourned.

/s/ THOMAS TODD,
Secretary.

(Testimony of Fay J. Hansen.)

Receiver's Exhibit No. 2—(Continued)

Report and Statement as to Shares of
Vita-Pakt Associates, Incorporated

The total number of shares of the above corporation allotted up to the date of this report is 790 shares of no par value common stock.

An accurate detailed and itemized description of the consideration received or to be received in payment for shares allotted is as follows:

No. of Shares	Consideration
530	Assets and good will of former business conducted under the name Vita-Pakt Associates by Fay J. Hansen, valued at.....\$53,000.00
260	26,000.00
<hr/>	<hr/>
790	\$79,000.00

Dated this 25th day of June, 1948.

/s/ FAY J. HANSEN,
President.

/s/ ROSEMARY A. HANSEN,
Secretary-Treasurer.

Resignation of Director

Thomas Todd herewith tenders his resignation as Director of Vita-Pakt Associates, Incorporated.

Dated this 9th day of February, 1948.

/s/ THOMAS TODD.

(Testimony of Fay J. Hansen.)

Receiver's Exhibit No. 2—(Continued)

Minutes of Meeting of Board of Directors of
Vita-Pakt Associates, Incorporated

Pursuant to waiver of notice a meeting of the board of directors was held at 2710-2nd Avenue, Seattle, on March 1st, 1948, at 11 a.m. o'clock.

Attending were Fay J. Hansen and Rosemary A. Hansen.

On motion duly made and seconded, it was resolved that the resignation of Thomas Todd as director was accepted.

On nomination Dr. H. S. Burkhart was unanimously elected to fill the vacancy left by Mr. Todd, to serve for 1 year or until his successor is elected.

/s/ ROSEMARY HANSEN,
Secretary.

The undersigned herewith waive notice of the above meeting.

/s/ FAY J. HANSEN,

/s/ ROSEMARY A. HANSEN,

/s/ THOMAS TODD.

(Testimony of Fay J. Hansen.)

Receiver's Exhibit No. 2—(Continued)

Affidavit of Value of Assets to be Received for
Non-par Value Stock

State of Washington,
County of King—ss.

Fay J. Hansen, being first duly sworn, upon oath deposes and says: That he is one of the incorporators of Vita-Pakt Associates, Incorporated.

That to the best of his knowledge and belief, the value of assets for issuance of its non-par value stock, does not exceed the sum of \$100,000.00.

Dated this 4th day of February, 1948.

/s/ FAY J. HANSEN.

Subscribed and sworn to before me this 4th day of February, 1948.

[Seal]: /s/ RUSSELL V. HOKANSON,
Notary Public in and for the State of Washington,
Residing at Seattle.

Admitted.

(Testimony of Fay J. Hansen.)

Receiver's Exhibit No. 7—(Continued)

Vita-Pakt Associates, Inc.

Profit & Loss Statement April 30, 1948

Sales		\$3390.49
Cost of Sales		
Inventory	\$4429.22	
Purchases	3299.63	
	<u>\$7728.85</u>	
Less Purchase Discounts	3.68	
	<u>\$7725.17</u>	
Inventory 4/30/48	2314.42	
	<u>\$5410.75</u>	
Samples: 31 Qts. @ .4666	14.46	
34 Pts. @ .2394	8.14	
342 1/2 Pts. @ .1245	42.58	
	<u>\$ 65.18</u>	
Cost of Goods Sold	\$5345.57	\$5345.57
Loss on sales for April		\$1955.08
Plus cost of samples		65.18
		<u>\$2020.26</u>

Direct Labor

Robt. E. Shafer	\$161.00	
Tony Koch	299.50	
Harold G. Johnson	299.50	
Dick Lindberg	299.50	
John Bisig	299.50	\$1359.00

Office & Administrative Salaries

Robt. E. Shafer	\$161.00	
Eve Johnson	249.00	
Fay J. Hansen	450.00	860.00
	<u>\$2219.00</u>	
Total Wages & Salaries		\$2219.00

(Testimony of Fay J. Hansen.)

Receiver's Exhibit No. 7—(Continued)

Operating Expenses

Shop Expense	\$877.20		
Truck Expense	220.68		
Office Expense	116.24		
Travel Expense	304.95		
Storage & Rent.....	313.20		
Rental—Juice Extr. Machines	600.00		
Advertising Expense	120.06		
Insurance on Equipment	25.88		
Bank Charges	10.00		
Interest	253.52		
Miscellaneous Expense	2.50		
Licenses	24.25		
F.O.A.B.—Employer	32.19		
Fed. Unempl. Tax	9.66		
State Unempl. Tax	86.91		
Ind. Insur. & Med. Aid	30.89		
City & State Bus. Taxes	11.86		
Depreciation on Equip.—Trucks	270.72		
Depreciation on Furn. Fix.	25.56		
Depreciation on Lease Imp.	88.81		
Total Operating Expenses	\$3425.08	\$3425.08	
		\$5644.08	\$5644.08
Net Loss for April			\$7664.34

Summary

Loss for January 1948	\$2527.20
Loss for February 1948	3617.34
Loss for March 1948	6250.34
Loss for April 1948	7664.34
Total Loss	\$20059.22

[Italicized figures are shown in red.]

Admitted.

(Testimony of Fay J. Hansen.)

Q. (By Mr. Jonson): Now, referring to the Minute Book, will you tell us who are named as the original incorporators of this corporation?

A. Myself, my wife, and Mr. Todd.

Q. Why was the corporation started?

A. We needed additional funds.

Q. Who is "we," by the way?

A. Well, this thing was a partnership preparing to go into a corporation.

Q. Between whom?

A. Paul Shafer and myself.

Q. All right. Now, go ahead.

A. And we needed additional funds. We talked to Mr. Langley and Mr. Todd several times about it and it was upon Mr. Langley's advice that—rather, we talked to Mr. Langley several times about it, who was an attorney, and he recommended that we have this corporation of—which we did, and at that time I was introduced to Thomas Todd and Thomas Todd took care of the corporation.

Q. And what was the property with which the corporation started?

A. They started with the assets of the Vita-Pakt Company.

Q. That is, the Vita-Pakt partnership?

A. Partnership, rather.

Q. And who received credit for those assets?

A. There was to be five hundred and I believe—five hundred and thirty-one shares of stock—this is

(Testimony of Fay J. Hansen.)

to the best of my recollection—531 shares of stock issued to me, of which there was to have been \$5,000 of that sold to pay Paul Shafer his immediate demands for his part of the partnership. The balance of the stock was to go to the corporation and the corporation would accept the assets and liabilities of the previous partnership.

Q. Now, at that time the partnership was principally you and Mrs. Hansen?

A. That is right.

Q. You had not at that time sold any stock?

A. That is right.

Q. And thereafter, according to the order, certain stock subscriptions were signed, one of which was by you, and consented to by Mrs. Hansen, wherein you transferred all of the assets of this business to the corporation, or at least you subscribed for stock? A. Yes.

Q. And the initial stock subscription of Mrs. Hansen was one share and Thomas Todd one share?

A. Yes.

The Referee: Was there a conveyance by you of the assets?

The Witness: No.

Q. (By Mr. Jonson): There was no formal bill of sale executed?

A. There were some notes given to Mr. Shafer for his share of the business.

Q. So then the money that was to come to Mr. Shafer was a return of capital contribution from the partnership, is that right?

(Testimony of Fay J. Hansen.)

A. I don't understand you exactly.

The Referee: Was he selling out or was he going on with the company?

The Witness: No, he was selling out. He was the manager of the Washington Co-op in Tacoma and he had enough to keep him busy there, and so on and so forth, and he wanted to get out of it.

Q. (By Mr. Jonson): And you also executed an affidavit, that the value of this property was not in excess of one hundred thousand dollars?

A. I suppose so. My signature is on it there. This paper work was all drawn out by Thomas Todd, and that's it.

Q. What did you consider the value to be at that time? A. Evidently that.

Q. Not in excess of \$100,000?

A. That's right.

Q. And further by-laws and these various other matters were executed and I believe we get down to this report and statement as to shares which reveals that there was allotted to you 530 shares?

A. That is right.

Q. As of June 25th, 1948?

A. That's right.

Q. And 260 shares for which \$26,000 in cash had been received as of June 25th, 1948?

A. Well, it hadn't been received at that time—wait a minute, wait a minute—what is this?

Q. June 25th.

(Testimony of Fay J. Hansen.)

A. Yes, that's—that's right, yes. I think it is, yes.

Q. So at that time you sold at least 260 shares of stock and received \$26,000 for it?

A. That is right, yes.

Q. About which you can make no claim as to being your stock? A. Oh, definitely.

The Referee: Definitely not, you say?

The Witness: Yes.

Q. (By Mr. Jonson): Now, during the time this corporation was in existence, who constituted the Board of Directors?

A. Well, Thomas Todd and myself and Rosemary, my wife. It was like any other corporation has done. It was not done any different than anybody else does it.

And then Dr. Burkhart was appointed when Doctor,—when Thomas Todd resigned, and when that time was I don't know, but Thomas Todd prepared the Minutes on it and I just can't recall the time, and so forth, about it.

Q. Now, during the time you were connected with the corporation, was there ever a formal meeting of the directors?

A. The Board of Directors? No, never.

Q. Who in fact then conducted the business of the corporation? A. I did.

Q. Did you at any time have any stockholders' meetings with respect to your authority or what you had been doing with respect to the corporation?

A. There were stockholders' meetings held right

(Testimony of Fay J. Hansen.)

from the beginning. Never official ones. There were approximately four or five stockholders' meetings held over a period of five or six months and there was never a question brought up by anybody. You people were the first people to bring up anything.

Q. Well, do you recall, if my memory serves me correctly, that when you testified at the creditors' meeting you stated there was never any stockholders' meetings?

A. I said never an official stockholders' meeting.

Q. Well, we will get back to that. With respect to your authority to set up this drawing account, do you recall what you stated about that?

A. No, I can't offhand, no.

Q. What is your position now with respect to the knowledge of the stockholders?

A. To the drawing account?

Q. Yes.

A. Well, I don't think they knew anything about it. It was there in the books. If they wanted to look in the books, it was all posted. The drawing account actually is a carry-over from the Vita-Pakt Company.

Q. But they did not know anything about the drawing account? A. No, I don't believe so.

Q. You had never brought the matter up to them and asked for any authority to set it up?

A. No. Dr. Burkhart had known that I was selling some of my own stock.

Q. He is the only one? A. That is right.

(Testimony of Fay J. Hansen.)

Q. Do you recall when you told him that?

A. No. It was in a telephone conversation. He used to call me about every day. We talked about the business, this and that.

Q. Now, then, with respect to the sale of the stock, do these represent the stock books?

A. Yes.

Q. Can you identify in those stock books just what shares of stock were yours?

A. This stock was set up and sold——

Q. No, just answer my question. Can you identify from there——

A. There is only one share here that——only one share of stock that was ever issued to me.

Q. And all the rest was issued directly as corporation stock to the various stockholders?

A. That's right. And later on, as this stock was sold, this was supposed to have all been straightened out and the stock of mine that was sold would then be issued to me and then re-issued to them.

Q. Straightened out by whom?

A. By myself and the Bookkeeping Department.

Q. And you used the term: "We were supposed to straighten it out." Whom did you mean by that?

A. I made reference to the bookkeeper, the bookkeeper and I. We had made out the certificates, as she was also the Secretary and general office girl, and she had done the typing.

Q. There was no definite understanding with the stockholders that that was to be done? A. No.

Q. They wouldn't know about that part of it be-

(Testimony of Fay J. Hansen.)

cause you had never told them that you were ever making this drawing account? A. No.

Q. Nor did you ever tell them that you were ever selling your own stock?

A. No, and I never told them which stock was sold, either. They were buying Vita-Pakt stock and they had no interest in what stock they were buying as long as it was stock certificate.

Q. By whose interpretation was that?

A. That is my interpretation.

A. That's right. The question was never brought up—never—by anybody.

Q. Well, why should they bring it up? They thought they were buying corporation stock?

A. Then they had to take it for granted. They were buying stock, Vita-Pakt stock. They didn't care whether it was corporation stock or "Joe Blow's" stock.

Q. They never told you that? A. No.

Q. Now, what was the condition of the business from the time you commenced business as a corporation which would have been after February 5th, 1948?

A. Well, the condition of the business was always—it lacked funds, as far as our part is concerned.

Q. Did you make any profits?

A. None. We never made a profit. I have never seen any business yet in six months that could make a profit.

(Testimony of Fay J. Hansen.)

Q. How long had you been in a partnership with Mr. Shafer?

A. Well, that goes clear back to the start of this thing.

Q. Let me ask you this, then: How long was this business in existence prior to being a corporation?

A. Well, it was Mr. Van Liew's business for a while.

Q. So then the business had been in existence longer than six months?

A. Not as a corporation.

Q. Not as a corporation?

A. Not even as a partnership.

Q. But as this type of a business it had been?

A. No, no, not the way we were doing. We were flying up the juice from California. It was entirely different,—altogether different. There was nothing similar to it,—no more than night and day.

Q. Except that you were selling orange juice?

A. Yes.

Q. And to the same kind of people?

A. That's right.

Q. Well, this file, which I believe you will recognize as being part of the records of your company, discloses a certain—certain profit and loss statements? A. That's right.

Q. For instance, showing a net loss in April of \$7,664.34? A. Yes.

Q. These were prepared by whom?

A. I believe those came from—I believe these

(Testimony of Fay J. Hansen.)

came from Jack Rundell. Maybe Eve did these if they are April. But the first ones were prepared shortly after Eve came. We didn't use Jack any more as a bookkeeper because we had hired Eve for that purpose.

Q. And about when did Eve start to work for you? A. It was about in December of '47.

Q. And this statement shows a combined loss from January through April of \$20,000?

A. Yes.

Q. So you were consistently operating at a loss?

A. That's right.

* * *

Q. (By Mr. Johnson): Handing you what has been marked as Receiver's Exhibit 8, was that statement ever exhibited to any stockholders?

A. I believe this was, yes.

Q. And that shows a daily net profit of \$56.43?

A. That is right.

Q. And that is dated July 7th, 1948?

A. Yes.

Q. And what was the purpose of exhibiting that statement?

A. More to make the stockholders happy than anything else, I guess.

Q. It was a misrepresentation then?

A. Yes, that was a misrepresentation—absolutely.

Mr. Walsh: He testified that he prepared it.

(Testimony of Fay J. Hansen.)

The Witness: Eve prepared it, or I prepared it.

Mr. Walsh: I have no objection to it. Is that a carbon or an original?

Mr. Jonson: He has identified that. I will offer it.

The Referee: Any objection?

Mr. Walsh: If there is an original, I would rather have the original.

Mr. Jonson: Well, I asked him: "Was this exhibited to the stockholders?" and he said, "Yes."

Mr. Wiley: I object on the ground that it isn't material to this at all. The stockholders had nothing to do with that. The question of whether or not there is some false representation that was made to the stockholders has nothing to do with it at this time.

The Referee: I haven't read all these pleadings but my understanding, from what I have read, and from what was said the other day, is that you and the trustee contend that the transfer made in Mr. Carney's office was void because of duress.

Mr. Wiley: One reason, Your Honor.

The Referee: One reason. And that Mr. Jonson contends now that statements made to him which had foundation in fact can be shown because of misrepresentation, is that your position, Mr. Jonson?

Mr. Jonson: Yes, sir.

The Referee: And if that is his position, and this statement was given to the stockholders—he doesn't say which stockholders—and there was no

(Testimony of Fay J. Hansen.)

objection to the form of the question, so the exhibit will be admitted.

(Document heretofore marked Receiver's Exhibit 8 for identification was received in evidence.)

* * *

Vita-Pakt Associates, Inc.
2710-2nd Ave. - Seattle 1, Wash.
Phone ELliott 6044

Distributors of
Vita-Pakt Brand Fresh Orange Juice

July 7, 1948

Cost Analysis

	Qts.	Pts.	½ Pts.
Juice—Cost plus freight .....	.1850	.0925	.0463
Bottles—Cost plus freight .....	.0337	.0228	.0165
Caps—Cost plus freight .....	.0028	.0028	.0028
Packing Cases—Cost plus freight .....	.0086	.0045	.0002
	<u>.2301</u>	<u>.1226</u>	<u>.0658</u>

Profit Analyzed—Basis 700 Gallons Daily
700 Qts. — 1400 Pts. — 700 ½ Pts.

	Qts.	Pts.	½ Pts.
Sales Price .....	.35	.18	.10
Cost .....	.2301	.1226	.0658
Gross Profit	<u>.1199</u>	<u>.0574</u>	<u>.0342</u>
Daily Output	700	1400	700
Total Daily Gross Profit	<u>\$83.93</u>	<u>\$80.36</u>	<u>\$23.94</u>
		\$188.23	
Daily Average Expense		<u>\$129.80</u>	
Daily Net Profit		\$ 58.43	

Admitted.

(Testimony of Fay J. Hansen.)

Q. (By Mr. Jonson): My question was: When did you start to sell your stock?

A. When we started selling stock? I will grant you there was no record kept here. There is only one share in here and that was transferred to Dr. Burkhart at the start for a dental bill, for work that he had done on my wife, and that was one share, and after that, even on the bonus shares, because there was confusion as to the stamps and stuff, the old certificates were cancelled out and we re-issued them.

Q. Now, right after the corporation started business you also borrowed money from the stockholders?

A. That is right.

Q. Have you any idea as to how much?

A. I imagine around ten thousand dollars—maybe a little more or a little less. Right around there some place.

Q. I have a list of the loans attached to my pleadings. This might be unusual. It really isn't in a form to put it in as an exhibit here, but if you would be willing to see if that is correct—

A. I couldn't recall as to the accuracy of this.

Q. Well, do you recall if such loans were made?

A. Yes, there were loans made from Dr. Kiefer and McWhinnie and Jankelson. There were also loans from Cleone Johnson and from Mrs. Penley, and loans made from my mother and loans made from Mrs. Peterson.

Q. What happened to that money?

(Testimony of Fay J. Hansen.)

A. It all went into the corporation.

Q. So that the proceeds from the sale of the stock and the proceeds from the loans were all mixed in with the proceeds from the sales?

A. That's right.

Q. You were going to straighten out the issuance of the stock later. Why didn't you wait to withdraw your money until that was done?

A. Because the money from my own stock went into the corporation at that time—I didn't need the money—when it was sold. So it all went in together and when I did need it, and as I needed it, I took it out.

Q. Well, let me ask you this: After our discussion of this now, do you recall whether Mr. Carney reminded you of some of these things that I have been talking about at this conversation in his office?

A. Not that I can recall. His principal interest was the threat of arrest on the selling of the stock. That was the most important thing.

Q. Well, he did mention other things then?

A. Yes. He mentioned that—this drawing account, as I said before, and I did explain it.

* * *

A. I admitted I misrepresented the stock to the stockholders long before Mr. Carney came into the picture,—not long before, but before he did. The Saturday morning that Mr Carney came in to the picture, prior to that it was Dr. Keefer, Dr. Dougherty, Dr. Burkhart and myself, and I can't

(Testimony of Fay J. Hansen.)

think of the fellow's name,—he is a test pilot at Boeing's—and there was supposedly to have been a couple of other doctors, and they couldn't attend—and I told them that there had been misrepresentation in the amount of orange juice and the amount of profit we were making.

Q. And that had been a continuous one on your part? A. No.

Q. When this had been done, how frequently was it?

A. Well, I couldn't say exactly on that. Towards the last—just before—towards the last of the corporation, mostly—prior to that most of it was potential we were talking about, this and that. A lot of it was facts and a lot of it—

Q. In other words, if you could get some more money, that this was what you could do with it?

A. Yes, a lot of times. Some of this money that was borrowed was borrowed for the purpose of getting fruit and so forth to continue the operation.

Q. Were the loans from Dr. Starksen and Dr. Kiefer obtained for that particular purpose?

A. For——?

Q. For use in the corporaiton's business?

* * *

Q. Now, just one other thing. What property did you turn over to the corporation for this stock?

A. We turned over just the assets of the company.

Q. Of what did that consist?

A. I can't recall offhand. There was a Dodge truck and bottles and our equity in, like refrigera-

(Testimony of Fay J. Hansen.)

tion and stuff that was obtained before, the lease on the building and so forth.

Q. What do you consider it was worth at that time?

A. Well, I think we gave it an approximate worth of around \$100,000.

* * *

A. That's prior to incorporation.

Q. Yes, December 17, 1947?

A. That is right.

Q. And you incorporated about two months thereafter? A. Yes.

Q. What kind of a profit did you make in 1947?

A. None.

Q. How much was your loss?

A. I couldn't say offhand.

Q. About \$15,000?

A. You people have the books. I don't know.

Q. Do you know whether \$15,000 might be correct? A. No, I don't.

Q. But you figure, if I understood you correctly, that the property was worth around \$100,000?

A. Well, that would be roughly what we figured on.

* * *

Q. At the time you transferred it on July 29th, 1948, when you signed the bill of sales, the deeds, signed the real estate contract, did you receive anything for doing so? A. No.

Q. Had you previous to that time received anything from the corporation or its stockholders that

(Testimony of Fay J. Hansen.)

inclined you to think you were paying an obligation by transferring the property? A. No.

Q. Or did they promise you any future consideration for transferring those assets?

A. It wasn't definitely promised, but it was put over to me in this manner, these people who feel kinder toward me for selling stock without a permit.

Q. Neither you nor your wife received anything in exchange for the transfer of those items?

A. No.

Q. (By Mr. Jonson): Other than this drawing account, you drew a salary consistently from the business?

A. That is right—not consistently. Just since about the first of the year I started drawing a salary.

Q. Since the incorporation?

A. Yes, that is right.

Q. Of approximately \$400 a month?

A. \$400 a month.

Q. And those funds were received separate and apart from the drawing account funds?

A. That's right, yes.

Redirect Examination

By Mr. Wiley:

Q. During this period from about January to July, did you also receive money from your relatives on loans? A. That's right, yes.

Q. How much did you receive?

(Testimony of Fay J. Hansen.)

A. I received around \$5,000 from my mother and my uncle that went into our house and furniture.

Q. What was done with all the proceeds from the sale of stock?

A. It all went into Vita-Pakt's bank account. Most of the checks were made out to Vita-Pakt Corporation. There were a few made out to me, but I signed them over to the corporation.

Q. Now, I think you testified that the stockholders didn't know anything about this drawing account. As a matter of fact, you and your wife were the big stockholders?

A. That is right. We controlled the stock.

Q. But the other stockholders didn't know anything about it? A. No.

Q. Did the other stockholders know anything about you putting your money for this stock into the corporation account? A. No.

Q. Now, in the formation of this corporation were the debts of the co-partnership assumed by the corporation? A. That is right.

Q. And included in that was some five thousand that Paul Shafer was to have?

A. No, Paul—there was some stock—Paul Shafer had some notes due at the bank that he had to meet right away, so there was some stock to be sold to pay him. I think it was four thousand dollars that he had to have right away, plus the interest. So we set it up as five thousand dollars worth of stock, to be sold immediately in order to pay him

(Testimony of Fay J. Hansen.)

so he could meet his notes whenever they were due. They were due in three or four months, and the balance of his money would come out of the profits.

Q. And how much was paid to Paul Shafer?

A. It was \$4,000, plus interest.

Q. And that was paid out of the proceeds of the sale of stock? A. That's right.

Q. And the stock that he was to be paid out of, was that included in your 530 shares.

A. That is right, that five thousand dollars worth came out of that 530 shares.

* * *

The Referee: And then at one time you decided 260 shares of that stock should—the proceeds of that stock should be corporate money?

The Witness: Prior to that.

The Referee: But the decision was made and it was carried out?

The Witness: That is right.

The Referee: But the 530 shares of stock was allotted to you?

The Witness: That is right.

The Referee: And you considered that your personal stock?

The Witness: That is right.

The Referee: But you sold that stock?

The Witness: Part of it.

The Referee: Part of it. And the checks for that stock were made payable to Vita-Pakt or to you?

The Witness: That is right.

The Referee: And then it was later drawn out

(Testimony of Fay J. Hansen.)

by you and charged to this drawing account?

The Witness: That is right.

* * *

The Referee: Did you tell Mr. Carney that this was property she had bought before her marriage?

The Witness: That is right.

The Referee: What did he say to that?

The Witness: He said it didn't make any difference, that they would take it any way.

The Referee: Did he give you any verbal or written releases or security or anything like that?

The Witness: No.

The Referee: That is all.

Q. (By Mr. Wiley): As a matter of fact, you have been arrested since you filed bankruptcy proceedings? A. That is right.

Q. For the crime of selling stock without a license? A. That is right.

Q. And that case is still under advisement by Judge Evangeline Starr? A. That is right.

Q. Now, as to the assets of the partnership, when you formed this corporation did you advise your attorney as to what all the facts were with reference to the assets?

A. I believe so. I don't believe it was prepared in any other manner. Thomas Todd is an O. K. guy, as far as I know.

Q. And did you follow your attorney's advice in setting up the corporate structure as to how much stock you were to have?

A. That is right. As a matter of fact, Mr. Lang-

(Testimony of Fay J. Hansen.)

ley even gave me heck for not having more control of everything. He said I should have had more control; also, Mr. Thorstensen one of our stockholders said so.

Q. Now, were the stockholders interested in the assets of the corporation or in the possibilities of it, as far as you know?

A. They were interested in potential as far as I know.

* * *

Q. (By Mr. Wiley): Handing you Bankrupt's Exhibit 11 for identification, will you tell us what that is?

A. This is a note that I had penned in or scribbled in or wrote in, or something, that was taken by me to Mr. Todd's office when the corporation was first prepared and later this was kept in another book—it isn't here—a stock record book for information. This is the breakdown as to the way the stock was to be sold and I gave this to Eve, the stenographer, the bookkeeper to keep as a reminder.

Q. Is this your plan of the stock to be issued and so on? A. Yes.

Q. Tell us about it.

A. \$18,000 to Fay Hansen. This stock supposed to be sold for cash. There is \$5,000 of stock to be sold for cash, for Paul Shafer, and \$16,000 cash for the company, or a total of \$39,000 to be sold in all. There was \$30,000 in stock to be sold to Fay Hansen and a total stock issuance of \$49,000.

Q. And what was the rest of the stock to be?

(Testimony of Fay J. Hansen.)

A. Not to be issued at this time, and a total of 100,000 shares in all.

Q. And was this slip to be kept in the stock book at all times?

A. Until maybe three or four weeks before this thing blew up.

Q. Was this information conveyed to any of the stockholders?

A. That is right, at different stockholders' meetings.

Q. Were all the stockholders present?

A. At the first one particularly. There were stockholders that bought stock later that weren't present then.

* * *

Q. (By Mr. Wiley): Mr. Hansen, I think you testified that when you sold some of this stock you told the purchasers that the corporation needed money. A. That is right.

Q. Now, do you have any idea of how many stockholders you told that to?

A. Just a few, as far as that part is concerned.

Q. Well, do you know about how many?

A. It would be less than a third—much less.

Q. Much less than a third that you made that payment to?

A. Maybe 25 per cent or less.

Mr. Wiley: That is all.

Recross-Examination

By Mr. Jonson:

* * *

(Testimony of Fay J. Hansen.)

Q. Now, to get back to who knew about this drawing account. Who were the officers during the time that the corporation was in existence?

A. Well, as I stated before, there was myself, my wife, and Thomas Todd first, and I can't recall—I imagine it will show in there when Dr. Burkhart took over his duties and then when this advisory committee met we had a complete change of stockholders down in Mr. Carney's office.

Q. But during the time that you were connected with the corporation, and working for it, you were the president?

A. And manager of the corporation, that is right.

Q. Mrs. Hansen was Secretary-Treasurer?

A. That is right.

Q. And at first Thomas Todd was an officer and then he resigned and then Dr. Burkhart?

A. That is right.

Q. Dr. Burkhart did not work in the business?

A. No.

Q. He was just a stockholder?

A. That is right. Neither did my wife work in the business.

I would like to correct my previous testimony. She didn't work there when it was a corporation. It was prior to that.

Mr. Jonson: I have no further questions.

Mr. Walsh: I have no questions.

ROSEMARY HANSEN

called as a witness on behalf of the Bankrupt, being first duly sworn, testified as follows:

Direct Examination

By Mr. Wiley:

Q. What is your name?

A. Rosemary Hansen.

Q. You are the wife of Fay J. Hansen who just testified? A. Yes.

Q. Do you recall the occasion when you went to Mr. Carney's office and signed transfers on your home, furniture, and car? A. Yes, I do.

Q. Will you tell the Court how you happened to go up to the office?

A. Well, my husband, Mr. Hansen, came to the house in the morning and said that we would have to go down to Mr. Carney's office about noon. He wanted to get there a little early and sign over all our property because he had been threatened with arrest and he figured that he had to do it or they would put him in jail. And the reason for it was, they told him it was because he hadn't a license to sell stock.

Q. Was Mr. Hansen excited at the time?

A. Well, he was very worried, yes.

Q. Do you think he was in any condition to exercise his will voluntarily?

A. What do you mean?

Q. Do you think he was in any condition to exercise any reasonable care in signing any papers?

(Testimony of Rosemary Hansen.)

Mr. Jonson: I think that is a conclusion, possibly, for the court to draw.

Q. (By Mr. Wiley): Well, what was your condition of mind at the time?

A. Well, naturally I was only looking out for his interests. He felt like if he signed all the property over he wouldn't have to go to jail, which he was worried about.

Q. What was your purpose in signing the instruments?

A. To help him, so that he wouldn't have to.

Q. Do you remember who was present when you signed these things? A. Yes.

Q. Who was?

A. Mr. Carney, Mr. Jonson, Dr. Burkhardt, Dr. Dougherty, and me.

Q. Was anything said about it in your presence at that time?

A. Well, there was a lot said. I don't know just what you mean.

Q. Well, was there anything said as to why the papers should be signed? A. No.

Q. Did Mr. Carney ask you if you were willing to sign over everything you had to keep your husband out of jail?

A. No. He just gave us the papers to sign. He didn't ask us if we were willing.

(Testimony of Rosemary Hansen.)

Cross-Examination

By Mr. Jonson:

Q. Well, about when did you return to Mr. Carney's office with Mr. Hansen? A. When?

Q. Yes.

A. It was about 11:00 o'clock, I imagine, in the morning.

Q. And then how long did you remain at Mr. Carney's office?

A. We were there until about noon and then we went out to eat. We came back in about twenty minutes and were there for practically a half an hour, I would say, in signing the papers—maybe a little longer.

Q. You did not hear anything during that time relating to the reasons for this transfer?

A. No.

* * *

ROSEMARY HANSEN

called as a witness on behalf of the Trustee, and having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Walsh:

Q. Mrs. Hansen, on July 29th, when you signed this deed and transferred the other properties to the corporation, did you receive anything by way of reward for doing that? A. No.

Q. From the stockholders or the corporation?

(Testimony of Rosemary Hansen.)

A. No.

Q. Did you feel that you were under any obligation or that you owed the corporation or the stockholders anything? A. No.

Q. Was there any promise of any future reward made to you for doing so?

A. No. All that was said, Mr. Carney said that the stockholders would feel kinder towards us if we did.

Q. Did you have any intention of making a gift? A. No, no, I should say not.

* * *

ERNEST A. JONSON

Cross-Examination

By Mr. Wiley:

Q. Did you make some kind of report on this matter to the State Department of Securities with reference to Mr. Hansen selling the stock?

Mr. Jonson: I object to that line of questioning. I think it would only have a bearing on the duress and fraud and the only place there is any evidence that is material with respect to fraud is as to what occurred either prior or at the execution of these instruments.

Mr. Wiley: They have denied that they made threats of prosecution. I want to show that they not only made threats but have actually been instrumental in having the prosecution instituted.

The Referee: He may answer.

(Testimony of Ernest A. Jonson.)

A. I called up the State Department. I don't know whether you would call it a report or not.

Q. You did contact them about this matter?

A. I did.

Q. And reported to them the facts in your possession with reference to Hansen's activities?

A. Upon questions from the State Securities Department, I advised them.

Q. Yes. And he was charged with selling stock without a permit, was he not, in Judge Starr's Court? A. I believe he was.

Q. You believe? You were present in court on several occasions, were you not?

A. That is right.

Q. And you participated in advising the Prosecuting Attorney with reference to the matter?

A. At the request of the Prosecuting Attorney's office. I went over to the Prosecuting Attorney's office and answered their questions.

Q. You did participate in the trial in open court; you were there discussing the matter with the Prosecuting Attorney at all times, were you not?

A. I wouldn't say that.

Q. Well, you were there, were you not?

A. I was there, yes.

Q. And you did discuss it with the Prosecuting Attorney's office?

A. I am not sure that I discussed it with them at the time of the trial or not.

Q. How much time did you spend in court during the process of the case?

(Testimony of Ernest A. Jonson.)

A. I was there all the time.

Q. But you don't know whether you discussed it with anybody or not?

A. I am not sure that I discussed it with the Prosecuting—with the Deputy Prosecuting Attorney.

Q. Did you in court discuss it with the representative of the State Department of Securities?

A. Yes.

Q. And did you not pay for the services of a court reporter in that trial, or at least employ a court reporter? I don't know whether you paid him or not.

A. Yes.

Mr. Wiley: That is all.

The Referee: For my own information—it is no secret—what was he charged with?

Mr. Wiley: With selling stock without a permit and acting as a broker without a permit.

The Referee: I thought that law applied to where the stock was offered to the public.

Mr. Wiley: It does, Your Honor. That was the question in the case. The Court has not decided it yet.

* * *

Recross-Examination

Q. (By Mr. Walsh): Mr. Jonson, you signed a verification of the Answer to the trustee's petition, an order to show cause in this matter, did you not? You signed the pleading prepared by Brother Carl, is that right?

A. I believe so, yes.

(Testimony of Ernest A. Jonson.)

Q. And do you recall that that pleading alleges, on page 2 there it says "For further answer to said petition by way of objection to the jurisdiction." In the first paragraph it says "That on or about the 29th of July, 1947, for a valid consideration, the above-named bankrupt executed an * * * the following described real and personal property." Could you tell me what the valid consideration was?

Mr. Jonson: I think he is asking for a conclusion.

Mr. Walsh: Well, he signed the petition.

Mr. Jonson: Well, that doesn't mean that he knows the legal meaning of all the terms in there.

Mr. Walsh: He says that he read and understands the contents.

Mr. Jonson: He has described the facts, or the facts were described in the petition.

Mr. Walsh: That is a fact. He says that the corporation received a valid consideration. What was the consideration?

The Referee: If you can answer it, all right.

A. Well, as I explained before, when we were talking to Mr. Hansen, it was pointed out to him that he had taken moneys from the corporation, that he had misrepresented to the stockholders and defrauded them out of moneys for the sale of stock and therefore he should do everything in his power to keep the corporation going and return all the property—and return all the property that he had.

Q. When you say that you are speaking of the

(Testimony of Ernest A. Jonson.)

\$16,000 that he had withdrawn from the corporation? A. That's right.

Q. And you considered that he owed that to the corporation? A. Yes.

RECEIVER'S EXHIBIT No. 33

Use this Form for
Cashier's Checks,
Foreign Domestic Drafts,
Money Orders

The Bank of California,
National Association

92048

6/30/48

Please issue:

cashier's check
draft on
money order

Number	Payable to	Amount
	H. Taylor.....	4500.00

Rate Vita-Pakt Assoc., Inc.

By: T. C. J.

[Initialed]: D.

The Bank of California

Number
92048

19-11

National Association

Seattle, Washington,

JUN 30 1918

\$ 500.00

Pay to the order of

H. TAYLOR

EXACTLY 450000000000

Jurham

CASHIER'S CHECK

Assistant Manager

*H. Taylor
Heiberu Taylor*

1918

NBC

PAY TO THE ORDER OF
ANY BANK, BANKER OR THROUGH
CLEARING HOUSE ASSOCIATION OF SEATTLE

JUL 24 1918

THE BANK OF CALIFORNIA
OF SEATTLE WASH. 1918

NBC

Receivers exhibit 83

(Testimony of Ernest A. Jonson.)

RECEIVER'S EXHIBIT No. 34

Memorandum Debit

Seattle, Washington, June 30, 1948.

Your Account has today been charged as follows:

Re. Purchase of our Cashiers Check No. 92048.

In Favor of H. Taylor.

Total Charge.....4,500.00

Debit Vita-Pakt Associates, Inc. * *

The Bank of California,

National Association

/s/ EVE JOHNSON,

Authorized.

[Stamped]: Paid 6/30/48.

[Stamped]: M.

[Longhand]: Initial D.

(Testimony of Ernest A. Jonson.)

The Referee: So he has got a special account and a special loan account, and a drawing account?

The Witness: That's correct, sir.

The Referee: And what does it represent, do you know?

The Witness: The special account is monies that Fay Hansen borrowed from other—from outsiders, and for some reason or another deposited in a—or recorded it in a liability account to himself, rather than the person from whom he borrowed the money.

The Referee: Well, did he deposit that money with the company?

The Witness: That money was deposited in the company account, yes.

The Referee: That was his money, wasn't it?

The Witness: I think we would have to go to the people who loaned the money to get what their understanding of the transaction was.

The Referee: Well, it wasn't company money, but it did go into the company account?

A. Well, Cleone Johnson—I mean, there is \$4,000.00 represented coming from Cleone Johnson, and I think her understanding was that \$4,000.00 was loaned to the company with some—I don't know whether she thinks—I believe she does understand that Fay Hansen was personally liable.

Mr. Wiley: The money did go into the corporation account, though, did it?

(Testimony of Ernest A. Jonson.)

The Witness: That is right.

* * *

The Referee: But he contended he was drawing against the sale of the stock?

The Witness: That is correct.

The Referee: Where are the stock sales?

The Witness: This account marked "Capital Stock Sales."

The Referee: And they were all his sales, weren't they?—or were they?

The Witness: I think the stockholders have a little different understanding.

Mr. Jonson: Well, what does the record show?

The Referee: I don't mean that. Fay Hansen was the only man selling stock, is that right?

The Witness: Yes, sir.

The Referee: Well, then, if the stock sales were offset against his drawing account it would build it up very well, isn't that right?

The Witness: Yes.

The Referee: But those transactions are all recorded here that we have been discussing this morning aren't they?

The Witness: They are, yes.

* * *

Mr. Wiley: Do your books show what was done with this \$1229.00? Where did it come from?

The Referee: What is that?

Mr. Wiley: Cleone Johnson on April 13th. Is there an item like that in the books?

(Testimony of Ernest A. Jonson.)

The Witness: That's right.

Mr. Wiley: Well, why is that charged to Hansen?

The Witness: Because he borrowed the money when he was a partner.

Mr. Wiley: Do you know that of your own knowledge now?

The Witness: I talked to Cleone Johnson.

Mr. Wiley: Does it show in the books there, any indebtedness from Hansen to Cleone Johnson?

The Witness: No; it is shown in his capital account.

Mr. Wiley: The capital account is what he had at the time the corporation was formed, isn't it?

The Witness: That is right.

Mr. Wiley: Then that was turned over to the corporation, was it not?

The Witness: That is right.

Mr. Wiley: In consideration of the stock issued to him?

The Witness: That is right.

Mr. Wiley: And the corporation assumed all of the indebtedness, according to the books of the corporation?

The Witness: According to the books of the corporation, right.

Mr. Wiley: But Cleone Johnson was paid. That was charged to him personally?

The Witness: Well, the books never reflect that the corporation received that thousand dollars, or the partnership.

(Testimony of Ernest A. Jonson.)

Mr. Wiley: You just got through testifying that was what was due to Cleone Johnson by the partnership.

The Witness: I testified from my own opinion. The partnership books do not reflect the receipt from Cleone Johnson, and I don't believe the corporation books reflect the receipt from Cleone Johnson before April 13th.

* * *

Q. Going back farther, you said that Mr. Hansen admitted to you that he had \$397.00 to buy an automobile? A. That is right.

Q. At all times he maintained this money that he had drawn from the corporation was his own—belonged to him, did he not?

A. He maintained that the corporation owed him money on the basis of the sale of his own stock.

Q. That this was part of the proceeds of the sale of his own stock? A. Yes.

* * *

Q. You say that you assumed that all of these checks drawn by Mr. Hansen were for his own personal private use?

A. All of the checks charged to his drawing account, yes.

Q. You have no knowledge whether or not the proceeds of any of those checks were spent for corporate purposes or not, do you?

A. I have no knowledge that they were so spent.

(Testimony of Ernest A. Jonson.)

Q. It is further based upon the fact that all of these kiting checks were corporate funds?

A. They were cleared. There was a credit and also a charge as far as Vita-Pakt funds were concerned. They would not affect my figures, here, whatsoever, as far as the final analysis.

Q. Now, it is also based upon the assumption that Mr. Hansen was not entitled to one penny for the sale of stock, is it not?

A. For the sale of his own personal stock?

Q. For the sale of any stock of the corporation.

A. That is right.

* * *

Q. (By Mr. Wiley): "\$3,350.00, Mrs. William Penley," do you know what that is for?

A. That is money Mrs. Penley loaned Mr. Hansen in 1947.

Q. While he was in partnership?

A. While he was operating as a partnership.

* * *

Q. This item of Cleone M. Johnson—somebody has written here "Loan for \$1,229.00," do you know what that was for?

A. I understand that was monies Cleone Johnson originally loaned Mr. Hansen when he was a partner in the old partnership.

Q. That was paid by the corporation bank account to Cleone Johnson?

A. That is correct.

* * *

FAY J. HANSEN

recalled as a witness, having been previously sworn resumed the stand and testified as follows:

Direct Examination

By Mr. Wiley:

Q. There has been testimony here that you admitted at various times to Mr. Carney and Mr. Jonson that you had used funds of the corporation to buy furniture and your car and the house. State whether or not that is true.

A. I explained to them that the drawing account was used for the purchase of—as stated in previous testimony here—I explained this to them that the stock was my own personal stock that was being sold. I went into details on that with Mr. Jonson even down at the plant prior to this meeting in Mr. Carney's office.

I also at that same time had started—and I told Mr. Jonson—I told him how we had issued the stock, the reason it was issued in that manner. I told him that the stock certificates had not been issued to me and then subsequently reissued.

Q. Why had they not been issued in that manner to you?

A. The exact reason I couldn't say except that it has always been this way—supposedly when all of the stock was sold, all of this stuff was going to go back and be corrected and be brought up to date.

Q. Who said that?

A. Jack Rundell, the bookkeeper—that was the

(Testimony of Fay J. Hansen.)

bookkeeper or auditor that we hired—according to Mr. Jonson, I don't know. But I knew nothing about books and we hired a man and paid good money to have these books set up. If they are not according to Hoyle, I know nothing about it.

Q. Did you ever at any time intend to donate any of your stock to the corporation?

A. No, absolutely not. As a matter of fact, Dr. Keefer testified—several of the stockholders, Dr. Keefer and Dr. Burkhart, both had stated to me that they didn't feel I should give my own stock as bonus stock in order to get the money in faster. They felt the company should stand that expense. But I told them that I was just as eager and anxious to make this company go as anybody else and I really didn't care.

Q. How much bonus stock was given away by yourself?

A. Offhand I couldn't say. I can only guess at it. I think their figures were approximately right.

Q. When you took this \$4,500.00 and paid Taylor and your house, whose money did you think that was?

A. I thought that was my own money. That was from purchase of stock.

This thing was set up originally for so much stock to be sold and so much to be issued to me and so much to be held in treasury stock, as I believe some of the men have testified. That is what

(Testimony of Fay J. Hansen.)

we were sticking to. Some of my own stock was sold at the first. But at that time we were going to build a home on that lot we procured but decided not to. A little later on we needed the money for this house and it was withdrawn for that purpose. The company used the money in the meantime without paying any interest for it.

Q. When you filed that allotment of shares that was for 790 shares?

A. That allotment of shares I haven't seen that before. Thomas Todd must have done that. This here would be explainable. The 530 shares of stock issued to me——

Mr. Johnson: I object to any explanation. He filed the thing and verified it was true. Why, now, does he come around and say it is different?

The Witness: I am not saying it is different. I am offering to explain it to you, but if you don't wish it, I won't do so.

Mr. Wiley: You have been explaining things around here for two days. I think the bankrupt is entitled to be understood.

The Referee: What did you want to explain?

The Witness: This thing, here, definitely bears out my statement. There was supposed to have been something like 31,000 of stock unissued as per this little slip of paper, here, that I carried up to Mr. Todd's office.

Q. (By Mr. Wiley): And this stock was not sold?

(Testimony of Fay J. Hansen.)

A. That is right—not sold.

Q. Paul D. Schaffer, this item, \$500.00 what was that for?

A. Paul Schaffer had \$17,000.00 coming for his share of the corporation—not \$18,000.00 or something else, but \$17,000.00 which he holds notes for except for \$4,000.00 plus interest that has already been paid him.

Q. And he was paid on his \$500.00?

A. That is right—as a part of that \$4,000.00.

Q. His share was to come out of your 530 shares, is that right?

A. There was 5,000 shares of stock that were supposed to have been sold for Paul Schaffer in order to pay him his first demand notes. The rest of them are dated, oh, a year to two years hence. At that time we figured that the corporation would be going along good enough to meet those demands.

Q. Did any of the stockholders besides yourself and your wife know of that arrangement to pay it out of your stock?

A. Yes. Dr. Keefer did explicitly. As a matter of fact, he was home sick and I explained it to him over the telephone one evening.

Also at the Vita-Pakt plant when Mr. Jonson was present and the committee was there, Dr. Keefer said that Paul Schaffer's stuff was definitely a liability of the corporation at that time.

Q. How much has Paul Schaffer been paid?

A. Approximately \$4,000.00 plus interest.

(Testimony of Fay J. Hansen.)

Q. That is included in the checks to you?

A. That is right.

Q. There are a couple of checks here for \$200.00, one for Fay J. Hansen \$200.00. Do you know what that is for?

A. I couldn't say on some of those. Absolutely not. It has been too far back and too much water has gone under the bridge. From memory I couldn't say.

Q. Would you say it was for your personal use or for the use of the corporation. Do you know?

A. Well, I would hesitate to say.

Mr. Jonson: He has already said he didn't know.

The Witness: I couldn't say on those smaller amounts what they are except for the Petty Cash account.

Q. (By Mr. Wiley): There are several Petty Cash Accounts. What were those for?

A. Every time I wanted to buy a paint brush or something like that, instead of coming to Eve to get some money, I turned in little slips of paper that would show how much money I spent for this and that. When that money she gave me was gone, then I would get some more.

Q. All of the Petty Cash is for corporation expenses? A. I believe so.

Q. Do you know why they are charged to you in this drawing account?

A. No, I wouldn't know.

(Testimony of Fay J. Hansen.)

Q. Who made the entries in this book?

A. Well, Eve did, I imagine.

Q. This item of \$4,500.00, that was spent by you upon your house?

A. Absolutely—absolutely.

Q. Now, we come down to the meeting in Mr. Carney's office. You heard Mr. Carney testify that he made no threats of any kind of criminal prosecution to yourself. What are the facts?

A. Mr. Carney did threaten me with criminal prosecution according to my previous testimony, according to the "Blue Sky Laws" of the State of Washington, I wasn't allowed to sell stock.

Q. What did he say about the fact that you had sold stock without a permit?

A. He said I was liable to arrest—"To be thrown in jail," I think the expression was. Of which later on I was arrested and the threat has been followed up by——

Mr. Jonson: Objection. If Your Honor please, the witness should answer the question only.

The Referee: I think he has answered that question.

Q. (By Mr. Wiley): Why did you make these transfers to the Vita-Pakt in Mr. Carney's office?

A. To keep from being arrested and thrown in jail.

Q. Do you consider that you were prevented from exercising your own judgment as to whether or not you should do it? A. Definitely.

(Testimony of Fay J. Hansen.)

Q. Did you feel at the time that you owed Vita-Pakt anything?

A. No. I explained it to Mr. Jonson, and also to Mr. Carney—what the situation was.

Q. Did Mr. Carney ask you to make these transfers in payment of a debt that you owed the corporation?

A. No.

Q. What did he tell you would happen if you didn't come back?

A. He told me to go home and get my wife and come back about noon or they would come out and get me—which I did.

Q. Is it not a fact that when you first consulted me about this matter that you told me that you didn't want to take any steps to get back your property if they might file charges against you in criminal court?

A. Absolutely.

Mr. Jonson: I object to it. Whatever was said by the men is self-serving and not admissible in Court.

Mr. Wiley: It is the purpose to show, Your Honor, that he was still laboring under the threat that he didn't want anything done if they would then carry out their threat.

The Referee: I am in doubt, I will admit the evidence.

Q. (By Mr. Wiley): You have since that time been charged with misdemeanor?

A. That is right.

Q. What was the crime charged?

(Testimony of Fay J. Hansen.)

Mr. Jonson: That is repetitious. I think we have gone over that.

A. The claim was that I was selling stock without a permit according to the Blue Sky Laws of the State of Washington and also selling stock without a Broker's license.

Q. (By Mr. Wiley): Is that the same crime Mr. Carney had threatened to have you arrested for? A. Right—right.

Q. Did Mr. Carney and Mr. Jonson at that time know that you claimed that the fund that had been charged in this drawing account belonged to you?

A. Absolutely—absolutely. Mr. Jonson, the auditor, I told him that down in the plant and, of course, again in Mr. Carney's office. He was there when it was explained to Mr. Carney.

* * *

Cross-Examination

By Mr. Jonson:

Q. What, Mr. Hansen, is your position presently with respect to the liability for money borrowed from Cleone Johnson, your mother, and Mr. Shafer—those people? Now, specifically you mentioned a minute ago that Mr. Schaffer was to be paid from your stock.

A. I said \$5,000.00 worth of that stock was to be paid out of the original \$4,000.00 which has been done.

(Testimony of Fay J. Hansen.)

Regardless of what was said there——

Q. You have changed your mind now, is that right?

A. No, you can read it back. It is in there.

Q. So, at least \$5,000.00 of it would be your personal liability—come from your stock, is that right?

A. The \$4,000.00 plus interest that was paid Paul Shafer came from my personal stock.

Q. That was your personal liability to Paul Shafer?

A. I believe it would be considered that. No, it was a corporation deal.

Q. Why didn't it come from your stock, then—why did it come from the sale of stock of the corporation?

A. I don't know exactly why that was done because at Mr. Todd's office, of which a slip or note I worked from was introduced here in evidence, was exactly the status of the situation.

Q. Which showed \$35,000.00 worth of stock to you, and \$18,000.00 worth of stock to Mr. Shafer, a total of \$53,000.00 worth of stock?

A. No, it didn't at all. Drag it out! (Document handed to the witness.) This is the amount of stock to be sold. It says right here, "\$18,000.00 to be sold." And it has got my initials, "F.J.H." \$5,000.00 to F.J.H., and this is to go to Paul Shafer. \$16,000.00 to be sold for cash—that would be the corporation's stock. There was supposed to have

(Testimony of Fay J. Hansen.)

been \$30,000.00 issued to Fay Hansen, or a total of \$69,000.00 to be issued.

* * *

Q. So, then, we have got a total of \$5,500.00 that went into your house?

A. Yes, that is right. I previously admitted a certified cashier's check—yes.

* * *

Q. I am talking about money, now, we got from the people who put it in for stock. A. Yes.

Q. And you started to pay that out to Shafer, advance to Fay \$200.00 January 22nd?

A. Yes.

Q. So if you say that you are selling your own stock, when did you start to sell it?

A. Right at the first evidently.

Q. Right at the first? A. Yes.

Q. Was that your idea, then, or what you are figuring out now to make it look better?

A. I believe in my previous testimony fifteen minutes ago, when I went on the stand, I said I started to sell the stock immediately. It made no difference. All of the money went into the corporation.

Q. All of the money went into the corporation?

A. Yes.

Q. And it was mingled up with the proceeds from the sale of orange juice and monies you borrowed?

(Testimony of Fay J. Hansen.)

A. Banks don't keep everything separate.

Q. I understand. But you didn't have any separate account?

A. That is right. The company needed the money and they used it.

Q. So when you withdrew money, you didn't know but what you might be withdrawing money that had come in from an account receivable, or may have come in on a loan?

A. It was my own money. I felt I could withdraw anything as far as that part was concerned, as long as it was done with discretion.

* * *

Q. (By Mr. Jonson): What is your position at this time with respect to the money that was borrowed from Cleone Johnson?

A. It has been the same as it ever was. She got some money and some stock back for her money that was loaned to the partnership. I don't remember the amount but I think—I think this—it could be as wrong as could be but I think it—it was around \$4,000.00 that she loaned to the partnership. She took part of that in stock that went to her, her brother, and Nellie somebody, and her mother and herself, and part of it in cash.

Q. That was, then, at all times, an obligation of the corporation after its formation?

A. It was an obligation of the partnership prior to the corporation.

Q. You borrowed the money?

(Testimony of Fay J. Hansen.)

A. For the partnership.

Q. Who was your partner at the time?

A. Paul Shafer .

Q. What was that money used for?

A. Oh, I don't know. It went into the partnership funds some place. I wouldn't know.

* * *

Q. How much stock do you consider you have sold of yours on June 30th?

A. I wouldn't know.

* * *

A. I wouldn't know how many shares of stock I was sold. I was told by Eve Johnson that I was digging into my stock. She had this little memorandum clipped to her stock book. I told her when we got to those points to let me know. We got to that point long before I ever thought we would. She told me about it and I made a remark to her I didn't care whether I sold my own stock or not, just so this company would go.

* * *

Q. (By Mr. Jonson): I would like to know how much of your stock was sold?

A. I want to know, first, how much stock was sold altogether?

Q. 615 shares were issued.

(Short recess.)

A. There was a total of 790 shares that was to

(Testimony of Fay J. Hansen.)

be sold, and issued in all, of which 530 shares was mine to do with as I saw fit, as my own personal property.

There was 260 shares of corporation stock sold. So far, according to the records, there was 561 shares of stock sold and issued. So by subtraction of 260 from 561 that would give you 355 shares of my own stock that was sold for cash.

Q. What figure are you subtracting from 561?

A. From 615.

Q. Oh, from 615?

A. A total of 790 shares of stock issued in all. That was supposed. Of which 530 shares was mine.

There were 250 shares of corporation stock sold. According to the facts and figures that are here, there is a total amount of 615 shares of stock sold and issued—of all of the stock, regardless of whose they were.

Subtracting 260 corporation stock from 615 gives 355 shares of my stock which was sold for cash.

Q. When do you consider that they were so sold?

A. I previously testified I don't know. They were sold right along with the rest of it. Checks came in, in my name or Vita-Pakt's name, and were all deposited in one bank account.

Q. You said 355 shares were sold for cash?

A. 355 shares of my own stock was sold for cash, that is right, of which the money is in the corporation, and of which I drew out part of it. The balance of it is still owed to me, if you want to look at it that way.

(Testimony of Fay J. Hansen.)

Q. So there was still 180 shares not sold?

A. No, that isn't the way it goes at all in my book.

Q. It would be the difference between?

A. Between 780 and 1000 shares.

Q. No, originally 355 shares of yours were sold?

A. Yes.

Q. Then you had 530 shares?

A. That is right.

Q. And the difference?

A. Well, you mean the difference between those two would be what was left of mine that was transferred at Mr. Carney's office?

Q. That was still not sold?

A. That is right.

Q. That would make about 175 shares not sold?

A. Yes, something like that.

Q. Then who gave the bonus stock away—the corporation?

A. It is all in here. According to your facts and figures 615 shares of stock were issued and that would include the bonus shares.

Q. I want to know how much of your stock was sold for cash?

A. I wouldn't know. That 355 would include some of the bonus shares.

Q. Did it include all of them?

A. If they all came from my shares.

Q. Do they?

(Testimony of Fay J. Hansen.)

A. You can subtract 80 from it and there is still plenty left.

Q. I understand that.

A. I think the 80 is included in the 615. It wouldn't make any difference anyway. That is all right.

Q. Yes, it does. Who is making the donation of shares—the corporation or you?

A. I believe in my previous testimony I stated that I offered the bonus shares and gave them of my own free will.

Q. So, then, included in the 355 is 80. So, then, it is fair to say that 275 were sold for cash and 80 were donated as bonus?

A. You could say that, yes.

Q. No. I want to know—is that the way you figure it?

A. I would say roughly that is the way I would figure it.

Q. Well, that is the way you are figuring it?

A. Yes. Of which it was explained at Mr. Carney's office and explained to Mr. Jonson that that was my stock. That is why the drawing account was there—before this blew up, and at Mr. Carney's office. And it didn't make any difference to anybody.

Q. So that you then would have had a right to \$27,500.00 worth of cash?

A. I believe so, yes. I never expected to get it unless the corporation was going over in a big way.

(Testimony of Fay J. Hansen.)

Q. How many shares did you consider that you owned on June 30th, or about that time?

A. That I owned?

Q. Yes—or on June 11th?

A. I don't know. I wouldn't know.

Q. What was the basis, then, of your representation to the Savings & Loan Association that you had a net worth of \$70,000.00 on June 11th?

A. Regardless of what it was, it was in the corporation's stock and that is what I figured the value of that stock was.

Q. That is what you figured the value of stock was?

A. That is right, and I explained it to the man at that time.

Q. How did you arrive at the figure of \$70,000.00; why couldn't it have been \$80,000.00?

A. That is the value I put on it. It could have been \$80,000.00. That is the value I placed on it as I stated in my previous testimony.

Q. Is that considering the value of the stock which had not been sold?

A. The stock that had been sold and the money the corporation owed me.

Q. Was there any value on the stock that had not been sold?

A. I thought the company was worth a lot more than you people did.

Q. As of June, you showed an operating loss of \$35,000.00?

A. That doesn't make any difference.

(Testimony of Fay J. Hansen.)

Q. Did that affect your valuation of the shares?

A. No.

Q. Tell me, then, included in that \$70,000.00 how did you arrive at it? You said money the corporation had, money that you had drawn out and remaining stock. Now, what are the figures that you used?

A. I used the figures that are in the minutes of the corporation—in the original setup of the corporation.

Q. Well, the original worth of your stock in the corporation was \$53,000.00? A. Yes.

Q. Meanwhile, by June 11th I assume you had sold some stock? A. That is right.

Q. And you had spent some of that money?

A. Yes.

Q. So, then, where was your \$70,000.00?

A. I already made the statement that I considered the valuation at that and that is what was given to the man. He asked me to give my approximate valuation and you know, yourself, as far as that part is concerned, it was a mere matter of formality on that loan deal, there.

Q. I am not interested in that. You claimed you sold your stock. Yet on June 11th you said your net worth was \$70,000.00. At that time you must have had some basis for it?

A. Certainly.

Q. How much money was in Vita-Pakt?

A. I don't know how much money was in there

(Testimony of Fay J. Hansen.)

at that time, but I do know that most of it was mine.

Q. Suppose the bank account showed nothing?

A. Well, if it wasn't there—it was there maybe in assets or something else.

Q. Did the assets of Vita-Pakt ever total \$70,000.00?

A. No, they didn't. There was a potential there. The rest of these guys bought stock. I could see it. Just because the rest of you people couldn't see it, doesn't mean it wasn't there. I could see it. It was my own estimate of value I put on it—just exactly what the man said.

Q. Did that include an interest in a house?

A. No. I hadn't bought the house, yet, at that time.

Q. I think you had paid \$1,000.00 by that time?

A. Just earnest money—yes, that is right.

Q. It didn't include anything except just the stock—your interest in the stock?

A. No, it included the money that Vita-Pakt owed me—money that was in Vita-Pakt.

Q. We started out with a total of \$53,000.00 that Vita-Pakt could possibly owe you. You had sold some shares and spent some of the money. The drawing account shows that you had spent some of the money?

A. That is right.

Q. How did you figure it out, then—it was worth how much?

A. I have testified two or three times as to the value of it.

EVE JOHNSON

called as a witness by and on behalf of the bankrupt, having been first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Wiley:

Q. Did Mr. Hansen ever talk to you about the question of the ownership of the stock that was being sold?

A. When he told me to take care of this paper, he told me that this was the basis on which we would be issuing the stock. When we got up—when we approached \$39,000.00 worth, I was to call it to his attention. Then we also discussed that for turning over the partnership assets he was getting approximately 530 shares.

Q. Did you ever discuss with him about the stock that was then being sold—whose stock it was?

A. Well, not very fully.

Q. What was said by you or by him?

A. Well, when we approached the \$39,000.00 he said we would just discontinue selling the stock, and when it was all sold we would straighten out his portion of it which was approximately 530 shares but we wouldn't straighten out his portion of it until we were further along.

* * *

Q. Here is another one to Paul Shafer \$1,000.00, check number 591.

(Testimony of Eve Johnson.)

A. "On account for partnership interest, charge Fay Hansen."

Q. Where did you get the information to put on these checks? A. From Mr. Hansen.

Q. Here is another one to Paul Shafer for \$1,100.00. That is "On account of"—

A. "On account for interest in partnership, charge Fay Hansen."

Q. Here is one to Paul Shafer, charged \$2,521.00.

A. "Charge Fay Hansen account in full, Paul Shafer partnership account."

* * *

Q. Then all of those entries were made in accordance with your instructions? A. Yes, sir.

Q. That is from him? A. Yes.

* * *

Cross-Examination

By Mr. Jonson:

Q. Had you been instructed at any time to separate any of the shares of Mr. Hansen's?

A. No.

Q. Or prepare any certificates for him?

A. No. Except that when the stock was all sold we would straighten out his shares of the stock. We discussed that a number of times. He was to help me straighten that part of it out.

* * *

ROSEMARY A. HANSEN

recalled as a witness on behalf of the bankrupt, having been previously sworn, resumed the stand and further testified as follows:

Direct Examination

By Mr. Wiley:

Q. Did you hear the testimony of Mr. Carney and Mr. Johnson relative to what happened when you were in their office and signed these papers?

A. Yes.

Q. Do you recall anything being said in your presence about signing over the car? A. Yes.

Q. What was said and by whom?

Mr. Jonson: I think this has been gone into before.

The Referee: Probably, but go ahead.

Mr. Wiley: Go ahead.

A. They asked Dr. Doherty if he thought that he would have to sign over the car, too. He figured that it belonged to him,—most of it, at least. So Dr. Doherty said that he thought that the stockholders would feel kind of hard if he didn't, and they agreed with him that they would.

Q. Were you more or less excited at the time?

A. I wasn't too excited. I was more resigned to the fact that it was something that had to be done.

Q. When were you first requested to sign over everything,—who requested it in the first place?

A. Do you mean in the office?

Q. No. Where did you first learn that you were supposed to sign over—

(Testimony of Rosemary A. Hansen.)

A. When Fay came home and told me.

Q. What did he tell you?

A. That he had been requested by Mr. Carney to come out and get me, and all our papers on our property, and bring them down to his office immediately under threat of arrest. He was very excited with that.

Q. What was your purpose in signing those papers?

A. Naturally, for the purpose of protecting him so he wouldn't have to go to jail. That was his one——

Q. Was that your only purpose in signing them?

A. That was the only purpose. I certainly wouldn't, under any other conditions, turn over anything to anybody.

Q. Did you feel because of the statements that Mr. Hansen made that you had no right to exercise your own judgment in the matter?

A. That is right.

Mr. Johnson: That is an improper question.

The Witness: That is the way I felt.

Mr. Wiley: This is the pith of the whole thing, Your Honor,—as to whether she felt she had a right to exercise her own free will in the matter.

The Referee: I think so, particularly in view of the fact that there was separate property involved.

Mr. Wiley: I think you have already answered, have you?

The Witness: I answered "Yes."

(Testimony of Rosemary A. Hansen.)

Q. And you were at the office frequently enough to sign those certificates? A. Yes.

Q. Did you know at the time you were signing them whose stock was being issued?

A. Whose stock was being issued?

Q. Yes.

A. Surely,—some of the time.

Q. What did you know about whose stock it was?

A. Do you mean whether it was the corporation's or Fay Hansen's?

Q. Yes.

A. Oh, no—no, I didn't know that. I thought you meant who was it issued to.

Q. No. By "whose stock" I meant whose stock was being sold. A. No.

* * *

FAY J. HANSEN

Redirect Examination
(Resumed)

By Mr. Wiley:

Q. In addition to the money you received from the sale of the stock and from your salary from Vita-Pakt Associates, did you receive other monies from them,—from the loans?

A. No, not from the loans.

Q. Didn't you borrow money from your uncle?

A. To go on the house, yes.

Q. How much did you borrow from your uncle?

A. I got \$3,000.00 there.

(Testimony of Fay J. Hansen.)

Q. And you borrowed money from your mother?

A. That is right.

Q. How much?

A. I think \$2,000.00.

Mr. Walsh: No questions.

* * *

The Referee: Mr. Wiley, maybe I had better ask you. How do you arrive at the figure of \$6500.00 being withdrawn? It says, "There was withdrawn with other funds a small portion belonging to him or to wit, the approximate sum of \$6500.00 as shown by the books of the corporation, now in possession of Mr. Johnson."

Mr. Wiley: Referring to this drawing account, Your Honor.

The Referee: That is what I want your advice on. There is no breakdown in that, is there?

Mr. Wiley: No. There were some of these things that I understood were corporation debts.

The Referee: This reply was filed, I think, the day we started the hearing.

Mr. Wiley: Yes.

The Referee: There is no breakdown in that, there is no breakdown in the papers attached to the complaint and no breakdown in the books, themselves.

Mr. Wiley: For instance, this \$500.00, Paul Shafer,—there was testimony that that was in payment of what he had coming out of this stock. I didn't know at that time whether it would be con-

(Testimony of Fay J. Hansen.)

sidered a personal debt or a corporation debt. The corporation assumes all of the debts and liabilities of the partnership. I understand from counsel that Paul Shafer has filed a claim against the corporation claiming he has \$17,000.00 coming from the corporation. The way that was arrived at, we went through here and tried to pick out the things that Mr. Hansen conceded were his personally.

If we eliminate Paul Shafer's \$5,000.00 and Mrs. Penley's \$4,000.00, I think, and Cleone Johnson's \$1,300.00. She was afterwards repaid some of that.

The Referee: It was that \$26,000.00 from the sale of stock that was kept with the corporation and not drawn out by Hansen. Do you concede that, Mr. Jonson?

Mr. Jonson: I didn't get your question, sir.

The Referee: I think this account should be reconciled some way. I don't like the way the case is being tried on these accounts.

In the first place, the pleadings and the file were late. I would like to know whether you concede that \$26,000.00 from the sale of the stock was retained by the corporation?

Mr. Jonson: From the books that is it certainly. I don't know what you mean by "retained."

Our position is that \$51,900.00 was received by the corporation for the sale of stock and that that is corporation funds and that Hansen subsequently withdrew approximately \$16,000.00 which he had no authority to withdraw.

(Testimony of Fay J. Hansen.)

The Referee: But only \$16,000.00. Do you claim he only withdrew \$16,000.00?

Mr. Johnson: From the drawing account figure. That is what our figures are based on.

The Referee: Then, if that is true, there is a great deal more than \$26,000.00 left from the sale of stock.

Mr. Jonson: Yes.

The Referee: Well, do you concede that any of this personal property was sold?

Mr. Jonson: No.

Mr. Wiley: Do you concede that some of it was given away?

Mr. Jonson: We don't concede anything as far as that stock is concerned. If he owned any stock, that is for him to prove and I don't see how——

The Referee: Has he proved it?

Mr. Johnson: No, sir.

The Referee: The minutes of the partnership, whereby they sell him all of the assets for 530 shares of stock, does that prove anything?

Mr. Jonson: Only the statement, itself, that that was done.

The Referee: What is your position about it?

Mr. Jonson: Well, first—for instance, as far as the sale of any stock from him,—now he may have been entitled to receive stock from the corporation, but he never took the necessary steps to complete that transaction of issuance of stock to him. The by-laws of this corporation appear to be fairly

(Testimony of Fay J. Hansen.)

standard and provide for the transfer of shares. The procedure therein provided was never complied with.

The Referee: That must be granted.

* * *

In the District Court of the United States for the Western District of Washington, Northern Division.

In Bankruptcy, No. 37835

In the Matter of

FAY J. HANSEN,

Bankrupt.

SUMMARY OF UNREPORTED TESTIMONY
ADDUCED ON WEDNESDAY, DEC. 8, 1948

DR. JOHN B. KIEFER

after being duly sworn on oath, testified in substance that:

My name is John B. Kiefer, by occupation a dentist, with offices in the Cobb Building. I first became acquainted with Vita-Pakt Associates, Inc., in January, 1948. I went to a dinner where I met Hansen, and several other dentists were there. The purpose of the meeting was to interest men in putting money into Hansen's business. At that time he did not have the corporation papers completed and was not ready to sell stock. He had some samples of orange juice, and his story was fine. He stressed the possi-

(Testimony of Dr. John B. Kiefer.)

bilities of the business and said he had not done too well in the past, as he was just starting out; he did not tell us how much money he had lost in the past. I first bought \$2500.00 worth of stock in January and later \$200.00 worth of stock for a share each for my children. After I bought the stock in January, I would go down and watch their operation after work. They were working all hours of the night; and he was always telling us about the long hours he was working and the activity that was going on in the business, and the large orders he was getting and filling. There was a meeting of some of the stockholders at the plant on February 20th. Hansen told us that everything was going along fine and he was making a profit of 100% on the juice. He had some figures typed up showing a cost analysis of the juice, and some other figures. He also gave us the figures on the distribution of the capital stock. (Witness identified Receiver's Exhibit No. 18, which was introduced and received in evidence without objection.) The figures on the Exhibit were the ones that he gave us. There were several meetings of a few of the stockholders that Hansen arranged to try to get more money. He was always giving us figures that the gallonage produced was very high and the profit per gallon very high; that he had large accounts receivable and had to buy large amounts of oranges and containers and was expanding the business and that was why he needed the money. He did not say he was selling his stock

(Testimony of Dr. John B. Kiefer.)

or treasury stock; he was selling stock in the corporation. I took the corporation minute book home on one occasion and saw the statement of shares where Hansen was getting 530 shares; this did not agree with what he had told us at the first meeting—the figures I jotted down on the papers—and I asked him about the discrepancy; and he said that what he had told us was correct and to forget about what was in the books. In connection with the bonus stock, I had suggested at one meeting that he should not give away his own stock as inducement for loans to the corporation, and that the corporation should pay interest. Hansen said he didn't care; that he was trying to help the company out. I didn't know anything about his drawing account and that he was drawing out money other than his salary. That wasn't what he told us. I loaned money to the corporation three or four times. He needed money in a hurry on several occasions for purchase of oranges or cartons. On one occasion he said that he had just had to pay out \$15,000.00 for cartons and needed money to buy oranges; that was in June, and I loaned him \$3000.00 to buy the oranges. I received a note of the corporation evidencing the loans I made. The loans were evidenced by notes. (Witness identified Receiver's Exhibits 19 and 22, which were introduced and received in evidence.) The note, dated June 30, 1948, was for \$3,000.00 loaned at that time. I have the checks that I gave in payment of stock and as loans, and will de-

(Testimony of Dr. John B. Kiefer.)

liver them to Mr. Jonson. The last informal meeting of a number of the stockholders was held at the plant on the evening of July 22, 1948. Hansen called some of us together to get us to buy more stock. He said that things were not going as well as they should and the remaining stock had to be sold in order to keep going. There was some indication that the condition of the business was a little different than what he had previously told us. A number of the fellows bought additional stock at this time. At the meeting, a committee of stockholders was appointed by Hansen to assist him in running the business and a meeting of the committee with Hansen was scheduled for the following Saturday morning at the plant. Before that meeting, some of us finally got suspicious about the entire thing, and I arranged to have an attorney, Mr. Elvin P. Carney, and an accountant, Mr. Ernest A. Jonson, attend the Saturday morning meeting. On that Saturday morning, Hansen finally admitted that he had been misrepresenting the production figures and the profits, but he still didn't give us the true figures that we later discovered. After some discussion of the business on that Saturday morning, Mr. Ernest A. Jonson was requested to examine the books and report to the stockholders the following week. I was not at the meeting in Mr. Carney's office with Mr. Hansen. I did receive several shares of bonus stock for making loans. On the last loans, Hansen needed the money so badly he said that he would pay

(Testimony of Dr. John B. Kiefer.)

\$500.00 for a loan; that is why the note is made out for \$3,500.00. Hansen insisted on including the additional \$500.00 on the note.

My attorney has filed a claim in the receivership against the corporation for money I loaned to rescind the stock sale.

DR. C. M. STARKSEN

after being duly sworn on oath, testified in substance that:

My name is Dr. C. M. Starksen, by occupation a dentist, with offices in the Medical-Dental Building, Seattle. I heard about Vita-Pakt Associates, Inc., from dentist colleagues, and Hansen came to my office and talked about it. He painted a rosy picture about the business. I first put money into it in March and then bought \$500.00 worth of stock. I put the first money in more as a speculation than anything else, because of the possibilities of the business. Hansen did say that the company was expanding and needed working capital. He didn't say he was selling his own stock, and he was giving bonus stock in connection with loans and stock purchases. I next bought \$1,000.00 worth of stock in April. I loaned \$2,000.00 around the end of June. He came to me and said he needed money for the company very badly; that he had just spent about \$13,000.00 for cartons and was short of capital, and they also needed oranges to keep going. On that

(Testimony of Dr. C. M. Starksen.)

basis, I loaned him the money. I do not have the promissory note I received evidencing the loan, but do have the canceled checks for payments and loans I made. (Witness identified Receiver's Exhibit No. 21, which was introduced and received in evidence without objection.)

My attorney has filed a claim in the receivership against the corporation for money I loaned, to rescind the stock sale.

DR. L. R. DOUGHERTY

after being first duly sworn on oath, testified in substance that:

My name is Lewis Dougherty, by occupation a dentist, with offices in the Cobb Building. I first heard about Vita-Pakt Associates, Inc., in March. Hansen came into my office and I talked to him a few minutes and told him to come back, which he did. He told me about the money—that he was then producing six to seven hundred gallons of orange juice a day, and he was selling it at a profit of \$1.27 per gallon. He brought out a paper showing his wages and expenses, and a profit statement showing that he was making a net profit then of something like three to four hundred dollars a day. I purchased the first stock on the basis of those figures, buying \$1,000.00 worth of stock. At the same time, in response to my questions, he said that he was only drawing \$100.00 a week out of the company.

(Testimony of Dr. L. R. Dougherty.)

I didn't know anything about the drawing account and that he was taking out money other than his salary of \$100.00 a week. There were several informal meetings of a few of the stockholders. I kept after him to have a board of directors appointed and to get information and an accounting out, and he always said he would. At every meeting he always had figures as to the good profits of the company, high production of orange juice and the costs. He always put off having a regular board of directors appointed by saying he was going to do it, and then never doing it. I bought \$500.00 worth of stock in the week after July 4; and on the basis of the fine showing the business was making. He accounted for the shortage of working capital by saying that he had large accounts receivable and he was afraid to press the accounts too hard, as he was just building them up; that he was putting in new equipment and machinery and within a few months would have everything paid for if he could sell the stock. Several of us, I believe, and at least I did, suggested that he borrow money from the bank; and he said that Mr. Hitchman at the Bank of California had told him to sell the stock first and that he was trying to get the \$37,000.00 worth of stock sold; and then could borrow money from the bank. I never did hear anything about the bonus stock until July; then he was offering a \$100.00 share of his own private stock for each \$1,000.00 worth of shares purchased. I had asked him when I first

(Testimony of Dr. L. R. Dougherty.)

talked to him how much stock he owned and what he had put into the business. He told me that he had put in about \$30,000.00 of his own money; that between him and his wife's family, they owned the control of the company; that his \$30,000.00 had gone in by way of assets and profits. The last informal meeting of the stockholders was on Thursday or Friday night, in the latter part of July, and he pleaded with us to buy more stock; he almost admitted that things were not as they should be; and a committee of the stockholders was appointed to meet with him on Saturday morning to try to assist him in running the business. He was supposed to be going to California on the following Monday in connection with corporation business, and someone found out that he had reservations on Sunday. On the prior Thursday night, he had sold more stock, and received the money, and someone got suspicious about him after hearing about the different reservations. As a result, an attorney and an accountant were contacted and requested to attend the meeting of the committee with Hansen on Saturday, July 24, 1948. I was present at the Saturday morning meeting. Hansen then, in answer to questions about the business, admitted that he had been misrepresenting the condition of the business and said that, in fact, he had only been producing about 275 gallons of orange juice a day. He didn't tell us anything about his drawing account, but did say that the company had been losing money right along. As a result of

(Testimony of Dr. L. R. Dougherty.)

this discussion, the accountant, Mr. Jonson, was requested to examine the books and report to the committee as soon as he was through.

I was present a short time at the meeting in Mr. Carney's office on Thursday, July 29th. Mr. and Mrs. Hansen, Mr. Ernest A. Jonson, Mr. Carney and Dr. Burkhart were there. I was not present throughout the entire meeting. While I was present, Fay J. Hansen asked me whether he should transfer the car along with the rest of his property, and I told him that he had taken the money away from other people by misrepresentation and owed it to the men who had trusted him to sign over everything he had. Also, while I was there, Mr. and Mrs. Hansen resigned as officers and directors, and Dr. Kiefer and I were elected in their place. I had not had any prior business experience in investing money or running a business. I would not have bought any stock in the company had I know the true facts.

My attorney has filed a claim in the receivership against the corporation to rescind the stock sale.

DR. GEORGE CHATALAS

after being duly sworn on oath, testified in substance that:

My name is Dr. George Chatalas, by occupation a dentist, with offices in the Stimson Building. I first met Fay J. Hansen through Dr. Burkhart. He

(Testimony of Dr. George Chatalas.)

told me about the business and suggested that I go by and look at the plant and talk to Mr. Hansen. I did this and met Hansen, who showed me around the plant, told me that he had a good business and was making money, but needed more money to expand the business. The next day—this was sometime in March—Mr. Hansen came to my office and brought some orange juice samples. I asked him for more details about the business. He said that the company was then producing and selling 300 gallons of orange juice per day; that that was their present capacity and that he needed more or different machines, and that the company was making a profit; that if the company were only juicing and selling 150 gallons a day, it would be breaking even. He said that he had a lot of money in the company himself. Either on that day, or the next day, I gave him a check for \$1300.00 for 13 shares of stock, ten for myself and one each for my children. If the books show that I paid this money on March 18, 1948, that would be correct. After that, I didn't pay a great deal of attention to the business, figuring that it was making a profit and that when the expansion was completed, I might start sharing in the profits.

Some weeks later, I was asked to go to a meeting of some of the stockholders in the Arctic Club. Hansen was there and reviewed the condition of the business and painted a very bright picture, and said that the business was making money. He had some

(Testimony of Dr. George Chatalas.)

papers from which he read figures as to the assets and liabilities and costs and expenses of production, which substantiated the statement, as to the profits and good condition of the business. Some of the stockholders wanted an audit and accounting of the books and asked Hansen to have that done. He said he would be glad to do so, but that the company was new and short of working capital, and that if they called in an accountant that it would cost from \$1,000.00 to \$2,000.00 to make the audit and that the company could not afford it. After that, no one insisted upon an audit. After this meeting, additional stock had been sold and Hansen called me to tell me that if I bought more stock he would be willing to give me \$100.00 worth of stock out of his own private stock, and that this was the arrangement he had made with all of the stockholders.

At that time, he said that he was producing and selling 700 gallons of orange juice a day; that he needed to sell more stock because he had had to buy a substantial amount of cartons for the orange juice.

There was a later meeting at the Washington Athletic Club. Several of the stockholders, probably eight or ten of us, were there. He again painted a very bright picture and read figures from some papers showing where all the money went, how much money was being made, and that there was indebtedness on the new equipment. He said that a Mr. Van Liew, with whom he had started out in the business, wanted to get into the company very badly,

(Testimony of Dr. George Chatalas.)

and that he was going to California to see him. He said he needed more money to keep operating because so much money had been spent on equipment and cartons and he had several carloads of oranges which he needed to pay for immediately. I asked him how it was that he had more stock to sell when he originally said he had only about \$6,000.00 or \$7,000.00 worth of stock left. He said that some of the prior stock, while it had been spoken for by some of the stockholders, had not been paid for; that he needed the money so badly that the stock would be sold to anyone else who would buy it. One of the stockholders wanted to know where all the profits were going and he said the profits were principally in accounts receivable; that the business was expanding and he was just breaking in on the new accounts and didn't want to go out and press the accounts receivable too hard. He said, for instance, that he had \$3,000.00 or \$4,000.00 coming from the Alpine Dairy. I then told him that I knew someone down there and would call and see to it that the account was paid, but Hansen asked me not to do so because the relations with Alpine were very good and Alpine was doing such a good job that he didn't want anything to disturb the situation; that the money would come in without any question. At the end of the meeting, some of the fellows bought more stock. The figures that Hansen gave us in that meeting he read from some papers. He said he had prepared financial statements to take to the

(Testimony of Dr. George Chatalas.)

Bank of California in order to get a loan. He had done so, but had been told at the bank to sell the stock first and then the bank would start to loan money.

There was a third meeting of some of the stockholders at the plant sometime around the early part or middle of July. At all the meetings, the principal discussion was by Hansen, and that he needed to sell more stock to keep the company going. At this third meeting, he again reviewed the condition of the business and the picture was very bright, so far as income was concerned. He said that all of the stock had still not been sold and that he was up against it and had to sell additional stock. That he needed the money to purchase oranges. Prior to this meeting, Hansen had come to me and wanted to borrow \$1500.00 which he said he needed for the purchase of a carload of oranges. He wanted to borrow money, but I would not loan him any money. More stock was sold at and shortly after the third meeting.

The last meeting which I attended was at the plant on a Thursday night, which was July 22nd. The purpose of the meeting was to raise additional money and he had papers in his hands which he said were financial statements. He read them and the figures showed that the company had been making substantial profits and had substantial assets, but that there was still indebtedness due against the assets. Dr. Dougherty took the statements and called Mr. Hitchman of the Bank of California.

(Testimony of Dr. George Chatalas.)

After this conversation, Dr. Dougherty told us that the bank would advance money to the company because of the fine financial condition, but that the balance of the stock must first be sold. Hansen said that the remaining stock simply had to be sold; that he did not have time to contact new people and that all existing stockholders would have to buy more stock; that he would then be free to go to Los Angeles to close the deal with Mr. Van Liew. At that meeting, and on the basis of the figures that Hansen read to us, I bought an additional \$500.00 worth of stock. Several other stockholders also bought additional stock. One of the stockholders suggested, towards the end of the meeting, that while Hansen had obviously been doing a fine job, the business seemed too much for him to manage as well as sell stock; that a committee of the stockholders should be formed to assist Mr. Hansen. This was discussed and Hansen selected his own committee and made a date to meet with them the following Saturday morning, July 25th. I was not on the committee and Hansen called me up later and apologized for not putting me on the committee and that he was doing it right then. I told him I could not serve on it.

After the Thursday night meeting, some of the fellows got suspicious about the entire thing because it developed that Hansen had plane reservations for Los Angeles for the following Sunday morning, which was a different day from what he had told us. As a result, an accountant and an at-

(Testimony of Dr. George Chatalas.)

torney were contacted to attend the Saturday morning meeting of the committee and Mr. Hansen. I went up to the plant where the meeting was to be held at about noon and then discovered that everything was in a mess. I did not receive any bonus stock. I do not have the cancelled checks showing my payment for stock, but will get them and deliver them to Mr. Jonson.

MR. ELVIN P. CARNEY

after being duly sworn on oath, testified in substance that:

My name is Elvin P. Carney; occupation is attorney, with offices in the Hoge Building. I first became acquainted with Vita-Pakt Associates, Inc., in July, 1948. I was called by Dr. Kiefer to attend a meeting at the Vita-Pakt office on Saturday morning, July 25, 1948. When I arrived Hansen and a committee of the stockholders, and Mr. Ernest Jonson were there. I asked a few questions of Hansen and the stockholders. No one seemed to know anything about the books, so we couldn't do much then. Mr. Jonson was requested to examine the books and report to the stockholders' committee and myself. On the following Thursday morning, Mr. Hansen and Mr. Jonson came into my office, Hansen arriving first, at the request of Mr. Jonson. I had a copy of Mr. Jonson's statement and also some statements that Hansen had circulated previously among the stockholders. I talked with Hansen and

(Testimony of Mr. Elvin P. Carney.)

told him that he had withdrawn about \$16,000.00 from the corporation without authority. I told him that he had failed to get a permit to sell stock and had committed a gross misdemeanor by selling stock without such a permit. I asked him what property they had, and Hansen told me that they had an equity in their home, an equity in a vacant lot, the household furniture in their home on which they owed considerable money, an equity in an Oldsmobile automobile, and some stock in Vita-Pakt Associates, Inc. I insisted that he turn over to the corporation all property of every kind that he or his wife had. He mentioned that he had borrowed several thousand dollars from his mother, a part of which was used in buying the house and furniture. His justification for withdrawing the money was that he had been selling his own stock and was entitled to all the money—that was what he said. I told him that he had committed a terrible wrong on the stockholders and that he was expected to resign as an officer and director and turn over the property that he had. He (Hansen) brought up the subject of whether or not the stockholders were going to prosecute, and I did say that probably the stockholders would feel more kindly towards him if he turned over the property to the corporation. He agreed to transfer his property to the corporation and I told him that he would have to go and get his wife and bring her back to sign the papers.

The meeting started at about 9:30 or 10:00 o'clock and we talked for about half or three-quar-

(Testimony of Mr. Elvin P. Carney.)

ters of an hour. Hansen then left and was gone for about an hour. He asked if any one of us wanted to go with him and I told him "No." I did not tell him we would come out and get him if he didn't come back. And, as a matter of fact, I didn't really expect him to come back. We didn't use any force of any kind, nor attempt to restrain him.

I called one of the stockholders to arrange to have Dr. Burkhart and several others there in order to elect new directors and officers. Hansen came back with his wife, and I believe Dr. Burkhart was already there by that time. Dr. Dougherty arrived a little later. I told Mrs. Hansen what we expected. Then Mr. and Mrs. Hansen resigned as officers and directors and their successors were elected, as shown by the minute book.

I believe there was some discussion about the car. Hansen didn't want to transfer it, and he asked Dr. Dougherty what the doctor thought of it. Dr. Dougherty told him it should be done, and he agreed. About that time, we had lunch; Dr. Dougherty and Dr. Burkhart left together, and Mr. and Mrs. Hansen, Mr. Jonson and myself had lunch together. Mr. Hansen mentioned that he had only \$5.00 left to his name now, so I agreed to buy their lunch. They may have signed some of the papers before going to lunch, but we did return to the office after lunch and completed signing them, or sign all of them. He did call me that night and again bring up the car and didn't want to turn it over, and wanted to raise some money and turn it over instead, but I told him I

(Testimony of Mr. Elvin P. Carney.)

thought it would be better to turn the car over. I never did do anything afterwards to recover possession of the house or car.

The witness identified, and there were introduced and admitted in evidence without objection the following Receiver's Exhibits:

21A Bill of Sale to Automobile.

22A Quitclaim Deed to residence property at 4113 S.W. 109th Street, Seattle.

23 Purchasers Assignment of Real Estate Contract (Lot 1, Block 3, Arroyo Vista).

24 Bill of Sale to appliances and furniture.

RECEIVER'S EXHIBIT No. 21-A

3824603

Bill of Sale

Know All Men By These Presents:

That Fay J. Hansen and Rosemary A. Hansen, his wife, of Seattle, Washington, parties of the first part, for and in consideration of One Dollar (\$1.00) and other valuable considerations, do by these presents grant, bargain, sell and deliver unto Vita-Pakt Associates, Inc., the following described personal property now located at 4113 S. W. 109th Street, Seattle, Washington, to wit:

One 1948 8 Cylinder Oldsmobile Club Sedan,

(Testimony of Mr. Elvin P. Carney.)

Model 68, Motor No. 8-138387 H, Manufacturer's Serial No. 68C-6531.

In Witness Whereof, the said parties of the first part have executed this Bill of Sale this 29th day of July, 1948.

/s/ FAY J. HANSEN,

/s/ ROSEMARY A. HANSEN.

State of Washington,
County of King—ss.

I, the undersigned, a notary public in and for the State of Washington, hereby certify that on this 29th day of July, 1948, personally appeared before me Fay J. Hansen and Rosemary A. Hansen, his wife, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given Under My Hand and Official Seal the day and year in this certificate above written.

/s/ ELVIN P. CARNEY,

Notary Public in and for the State of Washington,
Residing at Seattle.

Filed for Record July 29, 1948, 2:30 p.m.

Request of Elvin P. Carney.

ROBERT A. MORRIS,
County Auditor.

Admitted.

(Testimony of Mr. Elvin P. Carney.)

RECEIVER'S EXHIBIT No. 22-A

3824602

Puget Sound Title Insurance Company
Quit Claim Deed for Property Within the
State of Washington

The grantors, Fay J. Hansen and Rosemary A. Hansen, his wife, of the city of Seattle, county of King, state of Washington, for the consideration of One and No/100 (\$1.00) dollars in hand paid, convey and quitclaim to Vita-Pakt Associates, Inc., a Washington corporation, the following described real estate, situate in the county of King, state of Washington:

Lot 22, Block 4, Arroyo Vista Addition, according to plat thereof recorded in Volume 41 of Plats, page 45, Records of King County, premises to be known at 4113 S. W. 109th Street.

Dated this 29th day of July, 1948.

/s/ FAY J. HANSEN,

/s/ ROSEMARY A. HANSEN.

(Testimony of Mr. Elvin P. Carney.)
State of Washington,
County of King—ss.

I, the undersigned, a notary public in and for the state of Washington, hereby certify that on this 29th day of July, 1948, personally appeared before me Fay J. Hansen and Rosemary A. Hansen, his wife, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal the day and year last above written.

[Seal] /s/ ELVIN P. CARNEY,
Notary Public in and for the State of Washington,
Residing at Seattle.

Filed for Record July 29, 1948, 2:30 p.m.

Request of Elvin P. Carney.

ROBERT A. MORRIS,
County Auditor.

Admitted.

(Testimony of Mr. Elvin P. Carney.)

RECEIVER'S EXHIBIT No. 23

3824601

Purchaser's Assignment of Real Estate Contract

For Value Received, the undersigned Assignors, holders of that certain real estate contract entered into on the 1st day of July, 1946, between Edward A. Clifford and Josephine Clifford, his wife, and Wm. P. Joslin & Mildred W. Joslin, his wife, as Sellers, and Rosemary A. Griffen, whose husband's name is Fay J. Hansen, as purchaser, for the sale and purchase of the following real estate situated in King County, Washington, to wit:

Lot 1, Block 3, Arroyo Vista, recorded in Volume 41 of Plats, page 45, records of King County,

do hereby assign, transfer and set over to Vita-Pakt Associates, Inc., the Assignee, the said real estate contract, and said Assignors do convey said described premises to said Assignee.

Dated: This 29th day of July, 1948.

/s/ FAY J. HANSEN,

/s/ ROSEMARY A. HANSEN.

State of Washington,
County of King—ss.

I, the undersigned, a notary public in and for the State of Washington, hereby certify that on this

(Testimony of Mr. Elvin P. Carney.)

29th day of July, 1948, personally appeared before me Fay J. Hansen and Rosemary A. Hansen, his wife, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given Under My Hand and Official Seal the day and year in this certificate above written.

ELVIN P. CARNEY,

Notary Public in and for the State of Washington,
Residing at Seattle.

Filed for Record July 29, 1948, 2:30 p.m.

Request of Elvin P. Carney.

ROBERT A. MORRIS,
County Auditor.

Admitted.

RECEIVER'S EXHIBIT No. 24

3827547

Bill of Sale

Know All Men By These Presents: That Fay J. Hansen and Rosemary A. Hansen, his wife, of Seattle, Washington, parties of the first part, for and in consideration of One Dollar (\$1.00) and other valuable considerations, do by these presents

(Testimony of Elvin P. Carney.)

grant, bargain sell and deliver unto Vita-Pakt Associates, Inc., the following described personal property now located at 4113 S. W. 109th Street, Seattle, Washington, to wit:

1 NC8 GE Refrigerator, C # 8D051769
U # 82-095-079

1 CD1 GE Range #2317616 w/ 1 C3-47 Raisable Unit installed

Together with all other household property located at the above address.

In Witness Whereof the said parties of the first part have executed this Bill of Sale this 29th day of July, 1948.

/s/ FAY J. HANSEN,

/s/ ROSEMARY A. HANSEN.

State of Washington,
County of King—ss.

I, the undersigned, a notary public in and for the State of Washington, hereby certify that on this 29th day of July, 1948, personally appeared before me Fay J. Hansen and Rosemary A. Hansen, his wife, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

(Testimony of Elvin P. Carney.)

Given Under My Hand and Official Seal the day and year in this certificate above written.

/s/ ELVIN P. CARNEY,
Notary Public in and for the state of Washington,
Residing at Seattle.

Filed for Record Aug. 9, 1948, 3:45 p.m.

Request of Johnson & Dafoe.

ROBERT A. MORRIS,
County Auditor.

Admitted.

On cross-examination Mr. Carney admitted that he did not ask Mrs. Hansen at the time she signed the documents whether she was executing them of her own free will.

I have filed a claim for attorney fees in the receivership proceedings of Vita-Pakt Associates, Inc., and in that claim I stated that I had insisted that Hansen turn over all his property to the corporation, and I believe that is a fair statement of what I did.

The Referee asked Mr. Carney why these transfers would not constitute a preference, and Mr. Carney said that an individual had the right to prefer creditors, although it might be void in bankruptcy, but at the time he took the conveyances he did not know there was going to be a bankruptcy.

DR. B. JANKELSON

after being duly sworn on oath, testified in substance that:

My name is B. Jankelson, my occupation a dentist, with offices in the Stimson Building, Seattle. That I first became acquainted with Fay J. Hansen during the early part of the corporation's operations. He told me that the business was operating at a profit and was producing from 500 to 700 gallons of orange juice per day; that it cost 70c a gallon to produce the orange juice and it sold for \$1.40, and that there was a profit of 70c on each gallon sold. He had figures on the assets and liabilities and profit and expense which showed the business in very fine condition. As it was a new business, I told him I wasn't interested and wanted to see how it got along. I also found out, or Hansen may have told me, that there was a problem in regard to the use of the name "Vita-Pakt Associates." He didn't have any written authority to use the name and Mr. Van Liew apparently had some right to it. He was going to California, however, to straighten that out. That was another reason why I didn't want to have anything to do with the business and wouldn't until he had the full right to use the name.

I attended the meeting of some of the stockholders at the Washington Athletic Club. At that time Hansen needed more money and wanted to sell more stock and said he had \$10,000.00 tied up in accounts receivable, a substantial part of it from the Army and Government Hospital, I believe. He

(Testimony of Dr. B. Jankelson.)

said that it always took quite a while before you could get money from the Government and that with his money tide up like that, he was having a hard time. On the other hand, he said he wanted to get more Government business because you were always sure of being paid.

I refused to have anything to do with buying any stock although he kept after me all the time and he always pounded away at the same old thing—that it cost 70c a gallon to produce the orange juice and he was selling it at \$1.40 a gallon, and that there was a profit of 70c on each gallon sold and that he was selling 500 to 700 gallons a day. I checked with my bank and was informed that a Dun & Bradstreet report of the business showed that it was in very fine condition and was a profitable operation. He kept after me and although I did not buy any stock, I finally loaned him \$2,500.00 on June 10, 1948, for which I received a promissory note of the corporation. I loaned it to him because he said he needed money very badly, just having spent some \$15,000.00 for oranges or cartons and he was short of working capital; that at that time the business was making good money and he would pay it back without any trouble. After that time, he used to call me up to get me to exchange the note for stock and said that the stock was being sold and that he wanted me to be sure to have some of it so I could get in on the business and the profits that were being made. He repeated his claims as

(Testimony of Dr. B. Jankelson.)

to the fine condition of the business and how much orange juice was being produced and how much profit was being made. Finally I believe he called me on Saturday, July 24th, and I told him to come up to my office Monday, and we would talk about exchanging my note for stock. His repeated statements that it was costing 70c per gallon to produce the orange juice and he was selling it for \$1.40 a gallon and that he was making a profit of 70c a gallon, finally had their effect, and on July 26th, Monday morning, I surrendered my note and he delivered a stock certificate to me for twenty-five shares. Then I gave him the note and we had a full discussion again about his business. He said he was getting more Government business all the time; that he was getting a large volume with the Army; that as soon as they got the equipment paid for, that there wouldn't be any question about the stockholders getting profits, and again repeated his old formula of the juice costing 70c a gallon to produce, which sold for \$1.40 a gallon, at a profit of 70c a gallon, and that he was selling 500 to 700 gallons a day. After I got the stock certificate, the next thing I knew was the following Tuesday night at a Dentist's Study Club that I conduct, I believe it was Dr. Edgars saw me, and walked up and said "Hello, Sucker." I then found out that Hansen had admitted on the prior Saturday morning that his representations as to the profit and produc-

(Testimony of Dr. B. Jankelson.)

tion were false and that the company had actually been losing money.

I then filed a claim in the receivership against the corporation to rescind the exchange.

ERNEST A. JONSON

after being duly sworn on oath, testified in substance that:

My name is Ernest A. Jonson, by occupation a certified public accountant, with offices in the Dexter Horton Building; and am the receiver of Vita-Pakt Associates, Inc.

That I first became acquainted with Vita-Pakt Associates, Inc., in July, 1948. Dr. Kiefer called me and asked me to attend a meeting at the Vita-Pakt office on a Saturday morning, July 25, 1948. I arrived there about 11:00 o'clock or so, and Mr. Hansen and some of the stockholders were there. Mr. Carney arrived after I did. There was some discussion about the condition of the business. Nothing could really be done until the books were examined, so the meeting broke up and I was requested to examine the books. I started examining the books the following Monday at the Vita-Pakt office. In connection with examining the books, I talked to Eve Johnson, the bookkeeper, and to Mr. Hansen. I noted the drawing account through which Hansen had withdrawn about \$16,000.00 and

(Testimony of Ernest A. Jonson.)

asked him about it. He said that represented proceeds from the sale of his stock, and admitted to my subsequent questions that no certificate of stock had ever been issued to him, and that the stockholders did not know he had been drawing out the money. I also noted that he had been running a "check kite" with the corporation bank account and his personal account, which he admitted, and I did tell him that people had gone to jail for doing just that. When I had asked him about the money he had been withdrawing, he said it had gone to Paul Shafer, his former partner, and for general personal expenses. I asked Hansen specifically about a \$4,500.00 payment to H. Taylor and he told me it was none of my business. When I told him that the amount of the loss of the corporation since it started to do business was approximately \$35,000.00, he said that was a little higher than he thought—that he thought it had been about \$20,000.00 loss.

On the following Wednesday, I reported to Mr. Carney and a committee of the stockholders. Then on Thursday morning, I went to the Vita-Pakt office and told him that Mr. Carney and I wanted to talk to him in Mr. Carney's office. He drove down and arrived before I did. Mr. Carney did most of the talking and had a copy of the statement of the books I had prepared and some other papers Hansen had prepared for the stockholders.

Mr. Carney mentioned the failure of Hansen to

(Testimony of Ernest A. Jonson.)

get a permit to sell securities and that it was a gross misdemeanor. Mr. Hansen said he felt he was entitled to the money he had withdrawn because he had been selling his own stock, and Mr. Carney told him he couldn't come now and claim that in view of his prior representations. Neither Mr. Carney nor I threatened him with prosecution. He was the one that brought up the possibility of prosecution by the stockholders.

Mr. Carney told him that he was to transfer the house, car and furniture to the corporation, which he agreed to do. Mr. Carney told him that the stockholders would feel more kindly towards him if he did so. Hansen was told to go home and get his wife and he (Hansen) asked if one of us wanted to go with him, and he was told no. Neither Mr. Carney nor I told him that we would come and get him if he didn't come back.

He was gone for about an hour and came back with Mrs. Hansen. Dr. Burkhart and Dr. Dougherty also came to Mr. Carney's office. Mr. and Mrs. Hansen resigned as directors and officers and I believe Dr. Kiefer and Dr. Dougherty were elected in their place; the minute book shows what happened. There was some discussion about the car, but Hansen finally agreed to transfer it, too. Mr. Carney started to dictate the papers, and then we went out to lunch, Mr. Carney, Mr. and Mrs. Hansen and myself. After lunch, we returned to the office and Mr. and Mrs. Hansen signed the papers. When it was all

(Testimony of Ernest A. Jonson.)

over, Mr. Hansen said that he felt better about the whole thing.

After that meeting, I was appointed temporary manager of the business, and on August 4th was appointed temporary receiver, and on August 9th was appointed permanent receiver and qualified as such on August 9th. At the time I took over as receiver, the corporation was insolvent; claims have been filed in receivership totaling approximately \$40,000.00, and there are not enough assets to pay all claims, only a very small part of them.

I contacted the Department of Licenses to see if Hansen had in fact obtained any kind of permit, or made any kind of a report to the state in connection with obtaining a permit; if he had, I was looking for information as to Hansen's representation of the condition of the business. From there on, the department took over, and a representative of the department signed the complaint against Hansen for selling securities without a permit. I attended the trial of Hansen and testified for the State. I was interested in seeing how far a person could go in selling stock without getting a permit.

(Witness identified Receiver's Exhibit 26, which was introduced and received in evidence without objection. The books indicate that the partnership of Hansen and Shafer commenced business about July 1, 1947, and continued through December 31, 1947. That during that period certain assets, as well as liabilities, were acquired by the partnership and

(Testimony of Ernest A. Jonson.)

the partnership sustained an operating loss of approximately \$15,000.00. That as of December 31, 1947, the assets were \$24,255.83, and the liabilities were \$10,241.70. That included in the assets was an item of \$6,000.00 for good will. That the net worth of the partnership as of December 31, 1947, was \$14,014.13, which consisted principally of \$6,000.00 good will and \$3,870.30 in Drawing Account of Fay Hansen. That closing entries were made in the partnership books as of December 31, 1947, and such closing entries were transferred and became the opening entries of the corporation books. That the partnership books do not show Cleone Johnson, Mrs. Herbert Penley or Paul Shafer as creditors of the partnership.

That the corporation books were opened as of January 1, 1948, (corporation books and records identified, introduced and received in evidence without objection as Receiver's Exhibits 27 through 30, being as follows:

Exhibit 27—General and subsidiary ledgers

Exhibit 28—Sales, purchases, cash received and cash disbursement journal

Exhibit 29—Stockholders Ledger

Exhibit 30—Bank deposit slips.)

(Testimony of Ernest A. Jonson.)

RECEIVER'S EXHIBIT No. 27

Transferred to Corporation Jan. 1, 1948

From Vita-Pakt Associates

Assets & Liabilities

Date	Charges	Date	Credits
1948		1948	
Jan. 1	Bank Acct. \$ 17.73	Jan. 1	Accts. Pay. \$ 1,850.27
	Petty Cash		Contracts Pay. 6,156.52
	Accts. Rec. 2,186.58		Notes Pay. 1,000.00
	Inventory		
	Lease Improvements		Depr. Lease Improv. 74.60
	Equipment & Trucks		Depr. Equip. & Trucks
	Furn. & Fix. 1,494.39		Depr. Furn. & Fix. 51.22
	Prepaid Ins. 150.48		
	Prepaid Rent		Reserve With. Tax
	Advances to Employees		Reserve F.O.A.B. Employees
			Reserve F.O.A.B. Employer
			Reserve Federal Unempl. 12.65
			Reserve State Unempl. 84.75
			Reserve Business Tax
			Reserve Ind. Insur. 84.93
	Goodwill		Reserve Accrued Wages
			174.00

(Testimony of Ernest A. Jonson.)

Receiver's Exhibit No. 27—(Continued)

Special Accts.		
Bob Shafer	240.00	
H. Johnson	290.00	
Fay Hansen		
Drawing Acct.	3,870.30	
Capital Acct.	14,245.35	
Paul Shafer		
Capital Acct.	10,916.90	
		<u>\$39,959.12</u>
		=====
Loss 1947	15,018.42	
		<u>\$39,959.12</u>
		=====

(Testimony of Ernest A. Jonson.)

Receiver's Exhibit No. 27—(Continued)

Notes Payable (Other Than Bank of California)						
Date 1948	Posting Reference	Charges	Date 1948	Posting Reference		Credits
June 28	Repayment Note Due 6/28—Dr. Sykes .....CR 16	\$1,000.00	Apr. 27	C 8		\$ 1,880.74
July 2	Repayment of Note dated 6/24/48— Dr. John B. Kiefer.....CR 17	2,000.00	Apr. 30	J 7		1,119.26
July 22	Note Dated 6/23/48— John E. Nelson—exchanged for 10 sh. e stock.....J 13	1,000.00	June 10	30-day note dated 4/27/48 Dr. John B. Kiefer.....		\$ 3,000.00
July 23	Pmt. on Acct. of Note due 7/23/48—Dr. E. Kohl....J 14	500.00 4,500.00	June 17	60-day note dated 4/29/48 Dr. Arthur B. MaeWhinnie .....C 8		2,000.00 5,000.00
July 26	Dr. Jankelson Note exchanged for 25 sh. stock cert. 1189 .....J 14	2,500.00 7,000.00	June 23	2-day note dated 6/10/48 Dr. Jankelson .....C 11		2,500.00*
			June 23	60-day note dated 6/17/48 Dr. J. E. Nelson .....C 12		1,000.00
			June 23	21-day note dated 6/23/48 Dr. J. E. Nelson .....C 12		1,000.00
			June 23	5-day note dated 6/23/48 Dr. Walter Sykes .....C 12		1,000.00*

(Testimony of Ernest A. Jonson.)

Receiver's Exhibit No. 27—(Continued)

June 24	—day note dated 6/24/48	2,000.00
	Dr. John Kiefer C 12	
June 30	—day note dated 6/30/48	2,000.00*
	Dr. C. M. Starksen C 12	
June 30	Note due 7/9/48	3,000.00
	Dr. John B. Kiefer C 12	17,500.00
	*6/30 \$16,500	
July 16	Note due 7/23/48	1,000.00
	Dr. E. E. Kohl C 13	†\$500 acct.
	*7/31 \$11,500	18,500.00

[Italicized figures shown in pencil. * 'No note here' in pencil. † Shown in red.]

(Testimony of Ernest A. Jonson.)

Receiver's Exhibit No. 27—(Continued)

Deficit — 1947

Transferred From Vita-Pakt Associates to New Corporation

Date 1948	Charges	Balance
Jan. 1	Deficit Transferred From Old Company	<i>\$15,018.42</i> <i>1/31 \$15,018.42</i>

[Italicized figures shown in red.]

Capital Stock Sales

Date 1948	Posting Reference	Credits	Cert. No.
Jan. 19	King Paget—2 sh. ....C 1	\$ 200.00	# 4
20	C. Peterson—5 sh. ....C 1	500.00	# 5
26	O. H. Anderson—1 sh. ....C 1	100.00	#63
26	J. B. Kiefer—26 sh. ....C 1	2,500.00	#13 (1 sh. bonus)
		<i>3,300.00</i>	
Feb. 11	Kenneth B. Edgers—2 sh....C 3	200.00	# 1
11	Carl O. Anderson—3 sh. ....C 3	300.00	# 2
13	A. B. MacWhinnie—5 sh. ....C 3	500.00	# 3
20	Ernest E. Kohl—5 sh. ....C 3	500.00	#10
24	Stuart H. Lee—5 sh. ....C 4	500.00	#11
13	Douglas D. Kiefer—1 sh. ....C 3	100.00	#14
13	John Burton Kiefer—1 sh...C 3	100.00	#15 <i>2/28 5,500.00</i>
		<i>5,500.00</i>	
Mar. 2	Herbert J. Schnardt—5 sh...C 5	500.00	#12
1	O. H. Anderson—1 sh. ....C 5	100.00	#63
2	Carl O. Anderson—2 sh. ....C 5	200.00	#17
4	Phyllis E. Burkhardt—1 sh...C 5	100.00	#25
4	Barbara J. Burkhardt, 1 sh...C 5	100.00	#26
4	C. M. Starksen—5 sh. ....C 5	500.00	#23
4	Ross C. Lindley—10 sh. ....C 5	1,000.00	#22
	<i>81 sh.</i>	<i>8,000.00</i>	
4	Kenneth B. Edgers—25 sh...C 5	2,300.00	#24 (2 sh. bonus)
8	Thomas A. Swayze—2 sh....C 5	200.00	#28
9	James B. Neilson—5 sh. ....C 5	500.00	#29

[Italics are penciled in. Certificate Numbers and bonus shares are shown in red.]

(Testimony of Ernest A. Jonson.)

Receiver's Exhibit No. 27—(Continued)

Capital Stock Sales (Continued)

Date	Posting	Reference	Credits	Cert. No.
1948				
11	Ernest E. Kohl—22 sh.....C 5		2,000.00	#27 (2 sh. bonus)
	<i>135 sh.</i>		<i>13,000.00</i>	
15	A. B. MacWhinnie—6 sh. ....C 5		500.00	#30 (1 sh. bonus)
15	Sebastian A. Archer, 5 sh.....C 5		500.00	#32
15	James B. Neilson—5 sh. ....C 5		500.00	#31
15	Grant Seaton—7 sh. ....C 5		700.00	#34
16	James L. Archer—2 sh. ....C 6		200.00	#33
			<i>15,400.00</i>	
17	John E. Nelson—10 sh. ....C 6		1,000.00	#38 #45)
18	John E. Nelson—11 sh. ....C 6		1,000.00	#46) (1 sh. bonus)
18	Hildegarde Mehus—10 sh...C 6		1,000.00	#43
18	Geo. J. Chetalas—10 sh. ....C 6		1,000.00	#39
18	Faye E. Chetalas—1 sh.....C 6		100.00	#40
18	Joan B. Chetalas—1 sh. ....C 6		100.00	#41
18	George M. Chetalas—1 sh.....C 6		100.00	#42
18	Irving Anderson—5 sh. ....C 6		500.00	#44
	<i>209 sh</i>		<i>20,200.00</i>	
	<i>209 sh.</i>		<i>20,200</i>	
Mar. 18	Helen Thorstenson—5 sh.....C 6		500.00	#37
18	R'mary Thorstenson—5 sh. C 6		500.00	#36
18	Odin Thorstenson—5 sh. ....C 6		500.00	#35
	<i>224 sh.</i>		<i>21,700.00</i>	
22	D. D. Beebe—5 sh. ....C 6		500.00	#48
22	B. B. Beebe—5 sh. ....C 6		500.00	#47
22	Walter Sykes—20 sh. ....C 6		2,000.00	#50
22	Lewis Dougherty—10 sh. ....C 6		1,000.00	#49
	<i>264 sh.</i>		<i>25,700.00</i>	<i>3/31 28,200.00</i>
25	Ralph E. Williams—25 sh...C 6		2,500.00	#51
	<i>289 sh.</i>		<i>28,200.00</i>	
Apr. 22	C. M. Starksen—10 sh. ....C 8		1,000.00	#52
27	Chas. D. Cummins—1 sh. ....C 8		100.00	#53
27	Ralph Williams—25 sh. ....C 8		2,500.00	#54
29	B. B. Beebe—5 sh. ....C 8		500.00	#55 <i>4/30 32,300</i>
	<i>330 sh.</i>		<i>32,300.00</i>	

[Italics are penciled in. Certificate Numbers and bonus shares are shown in red.]

(Testimony of Ernest A. Jonson.)

Receiver's Exhibit No. 27—(Continued)

Capital Stock Sales (Continued)

Date	Posting	Reference	Credits	Cert. No.
1948				
May 3	Carl O. Anderson—2 sh.....	C 8	200.00	#56
6	Roy J. Conea—25 sh.	C 9	2,500.00	#57
10	Jas. A. Fraser—10 sh.	C 9	1,000.00	#58
10	B. J. Werner—10 sh.	C 9	1,000.00	#59
17	F. T. Emery—10 sh.	C 9	1,000.00	#60
26	C. M. Starksen—10 sh.	C 10	800.00	#61 (2 sh. bonus)
26	O. H. Anderson—2 sh.	C 10	200.00)	#63
26	O. H. Anderson—8 sh.	J 9	800.00)	#63 (1 sh. bonus)
	<i>408 sh.</i>		<i>39,800.00</i>	
June 7	Douglas T. Foster—5 sh.....	C 11	500.00	#64 5/31 39,800
23	Dr. W. Sykes—24 sh.	C 12	2,000.00	#66 (4 sh. bonus)
	<i>437 sh.</i>		<i>42,300.00</i>	
July 13	Dr. Irv. Anderson—6 sh.....	C 13	500.00	#70 (1 sh. bonus)
13	Dr. Lewis Dougherty, 5 sh. C	13	500.00	#71
22	L. J. Nelson—11 sh.	C 14	1,000.00	#74 (1 sh. bonus)
	<i>459 sh.</i>			
22	Dr. J. E. Nelson—10 sh.....	J 13	1,000.00	#75
	<i>469 sh.</i>			
23	Stuart H. Lee—2 sh.	C 14	200.00	#87
23	Dr. H. J. Schmidt—2 sh.....	C 14	200.00	#81
23	Dr. Roy Correa—5 sh.	C 14	500.00	#80
23	Hildegard Mehus, 5 sh.....	C 14	500.00	#85
23	Dr. G. Chatalas—5 sh.	C 14	500.00	#78
23	K. Pagett—3 sh.	C 14	300.00	#79
23	Dr. L. Dougherty—5 sh.	C 14	500.00	#77
23	Dr. F. T. Emery—5 sh.	C 14	500.00	#88
21	Dr. C. O. Anderson) 4 sh.....	C 14	300.00	
23	Dr. C. O. Anderson)		100.00	#86
	<i>Total.....505 sh.</i>		<i>48,900.00</i>	
23	Dr. Kenneth Edgers, 5 sh...J	14	500.00	#83
	<i>Total 510 sh.</i>			
26	Dr. Jankelson 25 sh. in exchange for note 6/10/48..J	14	2,500.00	#89
	<i>Total.....535 sh.</i>		<i>51,900.00</i>	<i>7/31 51,900</i>

[Italics are penciled in. Certificate Numbers and bonus shares are shown in red.]

(Testimony of Ernest A. Jonson.)

Receiver's Exhibit No. 27—(Continued)

Fay J. Hansen—Special Loan Acct.

Date	Posting	Date	Posting
1948	Reference Charges	1948	Reference Credits
Feb. 18	CR 5 \$ 500.00	Feb. 16	C 3 \$ 500.00
24	CR 5 900.00	19	C 3 900.00
	1,400.00	26	C 4 1,550.00
Mar. 1	CR 6 1,550.00		2,950.00
5	CR 6 1,300.00	Mar. 3	C 5 1,300.00
11	CR 7 2,000.00	9	C 5 2,000.00
18	CR 7 6,000.00	16	C 6 6,000.00
	12,250.00		12,250.00
Apr. 13	CR 9 500.00	Apr. 9	C 7 500.00
15	CR 10 1,500.00	12	C 7 1,500.00
16	CR 10 2,500.00	14	C 7 2,500.00
19	CR 10 1,500.00	16	C 7 1,500.00
	18,250.00		18,250.00
21	CR 10 2,500.00	19	C 8 2,500.00
22	CR 10 2,000.00	20	C 8 2,000.00
23	CR 11 800.00	22	C 8 800.00
	23,550.00		23,550.00

2/29 1,550.00

(Testimony of Ernest A. Jonson.)

Receiver's Exhibit No. 27—(Continued)

*30	Check 4/22 cancelled	CR 11	2,000.00 <i>21,550.00</i>	23	C 8	4,500.00 <i>28,050.00</i>	4/30	80.74
29	Checks charged	CR 11	(800.00					
29	back	CR 11	(4,500.00					
30	Kiefer note funds deposited		<i>26,850.00</i>					
	to Fays a/c to clear 0/10	J 7	(1,119.26					
May 6	Account ch. 690 not clearing	CR 12	(<i>27,969.26</i> (80.74 <i>(28,050.00</i>					

*Checks issued by Fay Hansen.**Checks issued by Vita-Pakt.*

[* Shown in red. Italicized numbers shown in pencil.]

(Testimony of Ernest A. Jonson.)
Receiver's Exhibit No. 27—(Continued)

Fay J. Hansen—Drawing Account

Date	Posting	Reference	Charges	Date	Credits
1948				1948	
Jan. 6	Advance to Fay	CR 1	\$ 50.00	Jan. 1	Balance.....\$3,870.30
12	Advance to Fay	CR 1	70.00	2/28	2,493.34 Cr.
15	Advance to Fay	CR 1	50.00	3/31	2,493.64 Dr.
19	Pmt. to P. Shafer	CR 1	500.00	4/30	2,856.36
22	Advance to Fay	CR 2	200.00	5/31	6,484.36
20	Pmt. to Mrs. Penley	CR 1	506.66	6/30	6,584.36
			1,376.66	7/31	11,755.36
Mar. 4	Pmt. to Mrs. Penley	CR 6	3,050.00		12,428.41
5	Advance	CR 6	200.00		
13	Pmt. to P. Shafer	CR 7	1,000.00		
16	Pmt. to P. Shafer	CR 7	1,100.00		
			6,726.66		
Apr. 7	Final Pmt. to P. Shafer	CR 9	2,521.00		
			9,247.66		
13	Pmt. to Cleone Johnson	CR 10	1,000.00		
6	Advance	CR 9	50.00		
23	Advance	CR 11	50.00		
30	Advance P. Cash	P 6	7.00		
			10,354.66		

(Testimony of Ernest A. Jonson.)

Receiver's Exhibit No. 27—(Continued)

May	8	Advance	CR 12	30.00
	3	Advance	CR 12	50.00
	25	Advance	CR 13	20.00
				<i>10,454.66</i>
June	1	Advance	CR 15	50.00
	12	Advance	CR 15	50.00
	16	Advance	CR 15	60.00
	8	Adv'ce to Bob Chg. to Fay.	CR 15	500.00
	30	Ch. to H. Taylor	CR 16	4,500.00
	30	Advances P. Cash	P 11	11.00
				<i>15,625.66</i>
July	14	Advance	CR 18	50.00
	24	Advance	CR 18	500.00
	9	Due Ernst Hdwe. Co.	P 12	72.05
	2	Advance P. Cash	P 13	18.00)
	2	Advance to P. Cash	P 13	7.00)
	8	Advance P. Cash	P 13	3.00)
	13	Advance P. Cash	P 13	20.00)
	20	Advance P. Cash	P 13	3.00)
				<i>16,298.71</i>

[Italics denote pencil figures.]

Admitted.

(Testimony of Ernest A. Jonson.)

Receiver's Exhibit No. 27—(Continued)

May	8	Advance	CR 12	30.00
	3	Advance	CR 12	50.00
	25	Advance	CR 13	20.00
				<i>10,454.66</i>
June	1	Advance	CR 15	50.00
	12	Advance	CR 15	50.00
	16	Advance	CR 15	60.00
	8	Adv'ee to Bob Chg. to Fay..	CR 15	500.00
	30	Ch. to H. Taylor	CR 16	4,500.00
	30	Advances P. Cash	P 11	11.00
				<i>15,625.66</i>
July	14	Advance	CR 18	50.00
	24	Advance	CR 18	500.00
	9	Due Ernst Hdwe. Co.	P 12	72.05
	2	Advance P. Cash	P 13	18.00)
	2	Advance to P. Cash	P 13	7.00)
	8	Advance P. Cash	P 13	3.00) 51.00
	13	Advance P. Cash	P 13	20.00)
	20	Advance P. Cash	P 13	3.00)
				<i>16,298.71</i>

[Italics denote pencil figures.]

Admitted.

(Testimony of Ernest A. Jonson.)

RECEIVER'S EXHIBIT No. 30

Deposited With
The Bank of California
National Association

Vita-Pakt Associates, Inc.
Seattle, Washington, June 30, 1948

Checks

Name or Number of Bank

Treas. King Co. <i>Renton School Sales Tax</i>	\$ 3.46
19-10-1250 <i>Starksen</i>	2000.00
19-10-1250 <i>Kiefer</i>	3000.00
	\$5003.46
C 48 202 June 30	5,003.46 D 3

[Italics are pencil notations on original.]

Admitted.

That the records of the corporation do not show that an inventory of the partnership business was made, nor was a bill of sale executed transferring the assets from the partnership to the corporation. That the items of assets and liabilities and capital of the partnership business were entered as the opening entries on the books of the corporation. That the books of the corporation did not show Cleone Johnson, Mrs. Herbert Penley or Paul Shafer as creditors of the corporation as of the time the books were opened. Neither is there any account of the time the books were opened. Neither is there any account shown on the books indicating a liability to

(Testimony of Ernest A. Jonson.)

Fay J. Hansen, nor is there any account showing any stock transactions of Fay J. Hansen. That there is an account entitled "Capital Stock Sales" into which the proceeds of the sales of all stock for which certificates were issued were credited. That the books of the corporation show that 519 shares of stock were sold at \$100.00 per share and \$51,900.00 received by the corporation and deposited in the corporation bank account. In addition, 96 shares were issued and by notation identified as "bonus" shares, making a total of 615 shares issued. Hansen said that the bonus stock was from his stock. That there is a loan account showing that money was received as loans from certain individuals after the corporation started business, which includes the names of Cleone Johnson, Mrs. Herbert Penley, Mrs. Eva Hansen and the names of various doctors who were also stockholders. The indebtedness incurred by the corporation to Cleone Johnson, Mrs. Herbert Penley and Mrs. Eva Hansen was not paid, according to the books of the corporation, and they have filed claims against the insolvent corporation. That payments made to Cleone Johnson, Mrs. Herbert Penley and Paul Shafer, which were charged to the Fay Hansen drawing account were in repayment of loans by said individuals to Fay J. Hansen in 1947. That according to the stock records of the corporation, no certificate of stock was issued to Fay J. Hansen, except for one share, which certificate for one share was subsequently transferred by Hansen

(Testimony of Ernest A. Jonson.)

to the corporation and reissued to Dr. Burkhardt. Hansen is not shown as a stockholder in the stock record book containing a list of the stockholders, nor is there any record of transfer of any shares by Hansen except the one share.

That commencing with January, 1948, the business of the corporation operated at a loss as follows:

January	\$2,527.20	April	\$7,400.92
February	3,024.61	May	6,426.95
March	6,867.64	June	9,253.85

That after the corporation started in business, money was received and credited on the books of the corporation from the sales of orange juice, stock and the proceeds of loans. That the sales of orange juice and sales of stock for the months of January through June were as follows:

Orange Juice	Stock Sales
January	January
February	February
March	March
April	April
May	May
June	June
	July

That I have computed the direct cost of the orange juice, taking into account the cost of the oranges and freight. That for every case of oranges used during May, they were getting approximately 2.27 gallons of orange juice, and the cost per gallon, exclusive of labor and overhead, was \$1.31. According to the

(Testimony of Ernest A. Jonson.)

records of the corporation, the corporation sold the orange juice for \$1.47 per gallon. That the cost, including labor, of the juice was greater than the selling price. That the average daily amount of orange juice produced during each month was as follows:

January	39.9 gallons	May	78.1 gallons
February	30.3 gallons	June	103.5 gallons
March	30.9 gallons	July	89.2 gallons
April	43.3 gallons		

That from my examination of the Purchase Account, at no time did the corporation ever purchase on any one day oranges or bottles in the amount of \$12,000.00 or \$15,000.00. That the largest purchase at any one time was the sum of \$2,578.30 on May 27, 1948.

That the business consistently lost money and the losses increased as the sales increased, because the orange juice cost more to produce and bottle than the selling price, and the more orange juice that was sold the greater the loss.

According to the records of the corporation, Fay Hansen drew a salary consistently of \$100.00 a week, with salaries charged to a "Salary Account." In addition to the Salary Account, there was a Fay J. Hansen Drawing Account to which withdrawals were charged in the sum of a little more than \$16,000.00. That the only credits to that account was an initial credit of \$3,870.30, which was carried forward from the net worth of the partnership busi-

(Testimony of Ernest A. Jonson.)

ness to the corporation books, specifically this Drawing Account. That, according to the entries in the Drawing Account, Hansen started to withdraw money for his own use from the corporation before any certificates of stock were actually issued to any individual, and prior to the date of incorporation in February. That among the items charged to Fay J. Hansen Drawing Account were payments made on the Hansen residence, automobile and a vacuum cleaner, also an item in the amount of \$500.00 in the form of a loan to one, Robert D. Shafer, for which Mr. Shafer executed a promissory note payable to Fay J. Hansen personally.

That there is no authorization in the minute book or any other records of the corporation authorizing Hansen to withdraw such money from the corporation. He told me that none of the stockholders knew about the drawing account.

There were identified, introduced and received in evidence the following exhibits:

Trustee's Exhibit No. 15—Contract Payment Book. Trustee's Exhibit No. 16—Receipt for taxes on vacant lot. Receiver's Exhibit No. 17—Title Insurance Policy covering Lot 1, Block 3, Arroyo Vista (Vacant Lot.)

(End of testimony of Ernest A. Jonson.)

Drs. Kiefer, Starksen, Dougherty, Chatalas, and Jankelson each testified on cross-examination that

he never made a request for inspection of the books of Vita-Pakt Associates, Inc., which was denied.

Dated at Seattle, this 24th day of February, 1949.

/s/ VAN C. GRIFFIN,

Referee in Bankruptcy.

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 37,835

August 24, 1949.

In the Matter of

FAY J. HANSEN,

Bankrupt.

Black J.

PROCEEDINGS

The Court: In connection with the petitions for review of the Referee's decision in the matter of Fay J. Hansen, Bankrupt, I may advise counsel that I have read and reread the various briefs put in by counsel. I have read the transcript of the evidence before the Referee. And I have also read the summary of unreported testimony.

Now, I would like witnesses to appear in this Court. I am anxious for these various witnesses: the Bankrupt personally, the Bankrupt's wife, Dr. John B. Kiefer, Jr., Dr. C. M. Clarkson, Dr. L. R.

Dougherty, Dr. George Chatalas, Mr. Elvin P. Carney, Mr. Ernest A. Jonson, the Receiver, Dr. Burkhardt, who does not appear to have testified. Am I right?

Mr. Johnson: You are correct, your Honor.

The Court: Now, I have certain questions I would like to ask, and I would like to see these witnesses that I have named personally present and available tomorrow or Friday. Which now seems most available, tomorrow or Friday, and whether morning or afternoon?

* * *

DR. L. R. DOUGHERTY

being first duly sworn, was examined and testified on oath as follows:

Examination by the Court

Q. Your name, please?

A. L. R. Dougherty.

Q. Doctor L. R. Dougherty? A. Yes, sir.

Q. Did you testify in this matter before the Referee in Bankruptcy on December 8, 1948?

A. Yes, sir.

Q. Have you today read the summary of your testimony on that date as made by the Referee in Bankruptcy?

A. I have read it, yes, sir.

Q. Is that summary a correct summary of the testimony as you gave it?

A. It is correct with this one omission, that I thought I was buying regular corporate stock.

(Testimony of Dr. L. R. Dougherty.)

Q. You thought that you were——

A. That I was buying regular corporate stock as a normal issue of stock and not a personal holding. In other words, I had not thought that I was buying Fay Hansen's stock.

Q. Insofar as the summary is given, is it in accordance with your testimony?

A. Very much so, as near as I can recall.

Q. What you have stated is merely an omission?

A. That is correct.

Q. Are you saying that you gave this statement in your testimony then which you say is omitted from the summary? A. I did.

Q. Is the summary as given true and correct?

A. I say it is, yes, sir.

Q. And this addition which you consider an omission, is that true and correct? A. It is.

The Court: All right. You may step down.

ELVIN P. CARNEY

being first duly sworn, testified on oath as follows:

Examination by the Court

Q. What is your name?

A. Elvin P. Carney.

Q. Your occupation? A. Lawyer.

Q. Where are your offices?

A. 1006 Hoge Building.

Q. Did you testify before Van C. Griffin, Ref-

(Testimony of Elvin P. Carney.)

eree in Bankruptcy, in this Fay J. Hansen bankruptcy matter? A. I did.

Q. On December 8, 1948? A. I did.

Q. Have you read the referee's summary of unreported testimony of yourself on that date?

A. I have.

Q. Is that summary insofar as it appears in accordance with the testimony you gave?

A. Except for omissions and the last paragraph, yes.

Q. The summary is correct except for omissions and the last paragraph. Do I understand that the last paragraph of the summary to which you refer reads as follows: "The referee asked Mr. Carney why these transfers would not constitute a preference, and Mr. Carney said that an individual had the right to prefer creditors, although it might be void in bankruptcy, but at the time he took the conveyances he did not know there was going to be a bankruptcy." Is that the paragraph to which you refer? A. That is right.

Q. Is that paragraph in accord with the testimony you gave?

A. Well, let me put it this way, your Honor. We were sitting there informally. I had completed my testimony, and the referee turned to me and said informally, "Now, off the record, why wouldn't this be a preference?" And I did make the statement in the first place that an individual could prefer his

(Testimony of Elvin P. Carney.)

creditors. What is stated here is correct as far as it goes, but it was not part of my testimony. It was just an informal conference as a lawyer talking with the referee.

Q. Other than that, is that paragraph true?

A. Well, plus the additional fact that I am at a loss to know whether I said this or not, your Honor, the additional fact that I thought was important that should be considered in any such statement made. I stated I had not thoroughly reviewed the question, and further stated that by reason of the fact that a large part of the properties which I insisted Mr. Hansen turn back to us were derived by wrongful diversion of corporate funds. For that reason it was not a preference in the usual sense of the word.

Q. But except for the last paragraph, the summary is in accordance with the testimony you gave?

A. Except for omissions.

Q. Except for omissions?

A. That is right.

Q. Now, what omissions were there?

A. At this conference with Mr. Hansen in my office on July 29—this report does not show the basis upon which I asked him to return—to convey the properties to the corporation. The facts and circumstances relating to that were that Mr. Jonson, who, prior to his appointment as receiver, had audited the books of the company, had brought his report in to me, and we had discussed it. Armed with the

(Testimony of Elvin P. Carney.)

facts which I had from his report plus the conversations with the stockholders, I advised Mr. Hansen that he had grossly misrepresented his sales, that he had reported sales of some seven hundred gallons a day when actually the sales were only about two hundred gallons a day; that he had represented he was making a profit of one hundred per cent on each gallon of juice sold, when, as a matter of fact, he was losing money on each gallon of juice sold—in fact, was not even recovering what it cost for juice and bottles without any consideration for overhead.

I further advised him he had represented the company was in good financial shape when, as a matter of fact, it was hopelessly insolvent and that he had withdrawn funds from the corporation without any authority to do so, and that he had solicited stock subscriptions and borrowings on notes on the theory that the corporation needed money, and that he had taken this money and diverted it to his own personal use in the acquisition of his home, partially for his car, and the furniture, and that he at this meeting on the 29th stated as justification for his withdrawing corporate funds that he was selling his personal stock.

I then told him that he had not represented to the people buying the stock that it was his personal stock, but represented he was raising money for the corporation, and was selling original issue stock, and, furthermore, the minute book, except for one share issued in his name, showed no stock having

(Testimony of Elvin P. Carney.)

been originally issued in his name, and it must be proved he was selling original issue of stock, and that if he was not, it was a misrepresentation to the stockholders.

Then we went into a discussion of these various properties which were transferred to the corporation, one being Mr. Hansen's home, the other being a vacant lot, and the other being household furniture, and another being his car. So we found from interrogating Mr. Hansen that with the possible exception of some \$3,000 which he had borrowed from his mother that his equity in the home of some \$8500 was acquired solely by the use of corporate funds through those withdrawals that he had made, personal withdrawals, and the same situation existed as to the equity in the furniture. As to the automobile, it appeared that he had traded in an old car for the car which he had, but had diverted \$349 of corporate funds for the acquisition of the car.

It appeared the vacant lot was something his wife had been purchasing, and no corporate funds had been diverted in its acquisition. It was being bought on contract, and was not yet paid for. It was based on these misrepresentations and these representations of Mr. Hansen as to his property that I requested that he transfer all of his assets back to the corporation.

Q. Does the summary with the explanation as to the last paragraph and with the addition of what you have now stated correctly represent the testi-

(Testimony of Elvin P. Carney.)

mony you gave before the referee on December 8th last?

A. May I check a moment? (Witness reads summary.) (Resuming): The statement at the top of page 13 is a little indefinite on this question of whether anybody was going to prosecute Mr. Hansen.

As to that I made the statement, which I previously just testified to, and he said, "If I do this, are the stockholders going to prosecute me?" And I told him I could not control the stockholders as to whether they brought prosecution or not, but if he did all he could to make restitution, they would probably feel more kindly toward him, and probably would not, but that I had no power over the matter.

I think with that addition it is in accordance with the facts and my testimony.

Q. Is such summary with the explanation as to the last paragraph and the additions you have made true and correct? A. Yes, your Honor.

The Court: All right. You may step down.

* * *

FAY J. HANSEN

being first duly sworn, was examined and testified on oath as follows:

Examination by the Court

Q. What is your name? A. Fay J. Hansen.

Q. Are you the bankrupt? A. Yes.

Q. And did you testify at different times in the year 1948 before Van C. Griffin, Referee in Bankruptcy? A. That is right.

Q. Was the testimony given by you as transcribed true and correct? A. Yes, sir.

Q. What time did you sign the deed and make the transfers to the corporation?

A. Just before noon.

Q. On what date?

A. I can't remember now.

Q. The month?

A. It was August of last year.

Q. August of 1948? A. Yes.

Q. And did you at that time transfer to the corporation your stock interest in the corporation?

A. That is right.

Q. At the time you transferred your stock interest, how many shares of stock did you own?

A. Right now I cannot recall, sir.

Q. Did you know then?

A. Roughly, yes. I don't remember how we did it. I don't recall exactly how Mr. Carney worded the deal on the stock. Anyway, we had a quick cal-

(Testimony of Fay J. Hansen.)

ulation right then in the office when my wife and Dr. Burkhart, being the officers of the corporation, voted me out and voted Dr. Dougherty in, and voted her out, and that is how the thing was worked.

Q. How many shares of stock did you own in the corporation at the time you made the transfer?

A. I could not recall now, sir.

Q. Do you have an approximate idea?

A. It has been so long ago I just don't remember.

Q. Do you have an approximate idea?

A. It would have to be awfully rough. It would be between one hundred and thirty thousand dollars.

Q. Between \$100 and \$30,000 worth of stock?

A. I just can't remember, sir. I have tried to put this out of my mind.

Q. In number of shares, give me an approximate estimate?

A. Well, a share was \$100.00, so you can say one share to 300 shares, roughly.

Q. One to three hundred shares? A. Yes.

Q. How many shares of your stock did you sell?

A. That I can't remember, either, sir. It has been so long ago, and I tried to put everything out of my mind about it. How much of it I sold I can't recall now.

Q. Can you give me one individual to whom you sold any of your stock? A. Yes.

Q. Who?

A. To W. J. Griffin, my father-in-law.

(Testimony of Fay J. Hansen.)

Q. You sold some of your stock to W. J. Griffin, your father-in-law? A. Yes.

Q. When was that? A. In 1948.

Q. How many shares?

A. He got \$2,000 worth of stock. That would be 20 shares.

Q. Did he pay you cash? A. Yes.

Q. Where did the cash go?

A. The cash went into the business.

Q. You mean to the corporation? A. Yes.

Q. Had any of those twenty shares ever stood in your name? A. No.

Q. Other than your father-in-law, can you give the name of any individual to whom you sold any of your stock?

A. Well, at the time I was selling this stock, I did not make any bones about which stock was being sold. I mean, I was selling the stock, and they were advised after the stock was all held we would go back and straighten out the situation. We knew how much stock we had to sell, and so forth,—like that, and we were keeping track of it, and after the stock was sold up to a certain point, we would go back and issue a reissue and put the stock stamps in the stock book and so forth, like that. There was never anybody but what knew what stock he was getting.

Q. Did you ever tell anyone other than your father-in-law that you were selling your stock to them? A. No.

(Testimony of Fay J. Hansen.)

Q. In August, 1948, at the time you made the conveyance and transfers to the corporation, did you consider at that time the corporation was hopelessly insolvent?

A. No, I have always felt that the business could have been saved, and in conversation with Dr. Burkhart it was pointed out to him that the machine should be changed. That was a month at least prior to the corporation folding up, and we had planned to make the change, but we just hadn't made the change as yet.

Q. I am not asking you about a month before. I am asking you on the day you made the transfer, did you at that time consider the company insolvent?

A. No, I don't believe so; I think it could have been saved.

Q. You thought at the time you made the transfers the corporation could be saved?

A. That is right. I thought that was the idea in getting the money from me, because they were going to have Mr. Van Loon come up, and they planned to keep the business going.

Q. When did you decide to repudiate the transfers and conveyances?

A. Well, that evening we went to Tacoma to my father-in-law, who lives there, and told them about it, and my brother-in-law was there, and he had this friend who was the prosecuting attorney at Tacoma. He called him that evening and told him the whole

(Testimony of Fay J. Hansen.)

thing, and he advised that we had been blackmailed out of the whole thing. That was his words; and for us to go see an attorney.

So I went to Thomas Todd Saturday morning. That was the following Saturday morning. Thomas Todd felt he was already involved, and recommended another attorney, and the following Saturday morning was when—this was Friday, and the following Saturday morning we went down to the attorney.

Q. Now, at the time you were talking with Mr. Carney, did he tell you that you had made false representations as to the amount of juice being sold and as to the profit? A. I believe so, yes.

Q. Did he make statements to you that you had misrepresented to the stockholders that the money was going into the corporation when in fact you were using part of it yourself?

A. He did, and I explained it to him at that time, that the stock I was selling was my own stock, and I went through the whole thing with him.

Q. Did he tell you that making these false statements in connection with the sale of stock or securing loans was a criminal offense?

A. That is right.

Q. He told you that was a criminal offense?

A. That is right. I think he said a misdemeanor or some darn thing. I don't remember exactly.

Q. Did he say that telling a person you were selling a large quantity of juice when you were not

(Testimony of Fay J. Hansen.)

and getting a loan from such person or selling him stock was a misdemeanor?

A. It was something along that line. I can't recall exactly the actual wording of it, but it was something like that. Also, at the time, if I may interject this—it was not inserted in the other court down below—at the time we transferred this stock and property to the corporation, I asked Mr. Carney,—I said, “How about the money my folks and uncle have in the property and car and so forth?” He said, “That is just your hard luck. You worry about that.”

Now, that was not brought out in the case below in Judge Van Griffin's court.

The Court: You may step down.

ERNEST A. JONSON

being previously sworn, was recalled and testified as follows:

Examination by The Court:

Q. Mr. Jonson, you previously were on the stand this afternoon? A. Yes, your Honor.

Q. And I asked you as to a certain summary being in accord with your testimony, and you said it was? A. Yes.

Q. And do I understand that you wish to make a correction?

A. I understand that I originally read the wrong

(Testimony of Ernest A. Jonson.)

copy of the unreported testimony. I read the copy prepared by my counsel rather than the copy prepared by the referee.

Q. Have you now read the summary of your testimony on December 8, 1948, as made by Van C. Griffin, the referee in bankruptcy?

A. I was given a copy by counsel, which purported to be that.

Q. I am handing to you now the summary of unreported testimony adduced Wednesday, December 8, 1948, as reported to me by the Referee in Bankruptcy, and on pages 17, 18, 19, 20, 21, 22, 23 and 24 appears the summary of your testimony as made by the referee. Have you read that?

A. Yes, I have.

Q. Is that summary correct?

A. Except for certain parts regarding the conference between Mr. Hansen, Mr. Carney and myself in Mr. Carney's office.

Q. Is the summary as given as to that correct insofar as it is given? In other words, are there merely omissions, or is the summary incorrect?

A. There are some omissions, and the manner or the order in which the events are stated did not occur in that order.

Q. Then, would you give the correct statements as to what your testimony was?

A. When I arrived at Mr. Carney's office—I believe it was approximately 9:30, and Mr. Hansen and Mr. Carney were there. We started discussing the financial statement I had prepared, which re-

(Testimony of Ernest A. Jonson.)

flected a substantial loss in the business. We also discussed drawings made by Mr. Hansen from the corporation. At that time Mr. Hansen claimed that certain stock he had sold was his, and I told him that the doctors did not understand it that way.

After discussing these points for approximately fifteen or twenty minutes, Mr. Carney told Mr. Hansen that he thought he had done the stockholders a great wrong, and that the only way it could be righted would be for him to sign over his stock in the company, his house, his car, and all his property.

I believe Mr. Hansen's first reactions were that he did not understand, and it was repeated to him. I believe there was again a discussion as to his stock sales, and I believe Mr. Hansen brought up the question as to whether or not he might be criminally prosecuted, at which time he was told that neither Mr. Carney nor myself had any control over that, because we were not the ones who were wronged; it was the stockholders, the ones who put up the money, and it was entirely up to them as to how they felt about the matter. The question of whether he had violated the "Blue Sky" laws was also discussed, and I believe Mr. Carney mentioned it was a gross misdemeanor.

Mr. Hansen then agreed to transfer all his property as requested by Mr. Carney, and he was told to go home and get his wife and come back. Mr. Hansen asked us if either one of us would care to accompany him to insure his return, and we told

(Testimony of Ernest A. Jonson.)

him we had no desire to do so, that he was doing it on his own volition. In approximately an hour Mr. Hansen returned with his wife. I believe the rest of the testimony is correct as shown on the summary.

Q. Is the summary as made by the referee as added to and modified by you on this second appearance by you this afternoon on the stand true and correct? A. Yes, it is.

Q. And is that the testimony you gave before the referee? A. Yes, sir.

ELVIN P. CARNEY

being previously sworn, was recalled and testified on oath as follows:

Examination by The Court:

Q. Mr. Carney, who employed you in connection with this matter?

A. On Saturday, the 24th of July, Dr. Kiefer called me and said he was having some difficulty with the company, and would I meet with him at the office of Vita-Pakt, which I did.

The arrangement for employment was rather unsatisfactory from there on. I was representing a committee. The committee in turn represented a group of stockholders, and they were supposed to raise the funds to pay my fee.

Q. Who was the committee?

(Testimony of Elvin P. Carney.)

A. Well, it was Dr. Dougherty, Dr. Kiefer, and Dr. Burkhart.

Q. Doctors Dougherty, Kiefer and Burkhart?

A. The committee changed from time to time. Let's see who else were the active ones on it. At the first meeting a Mr. Fraser was there, but he was not at any other committee meeting.

Q. What stockholders did this committee represent?

A. Well, they felt they were representing all of them, but when we had a stockholders' meeting, some of them just sat by and said nothing. I have a list of those who contributed to the attorney's fees, if your Honor is interested in that.

Q. How many stockholders were there?

A. I forget that. It was between thirty and fifty, I believe.

Q. Between thirty and fifty stockholders in the company? A. Yes, that is right.

Q. How many contributed to your fee?

A. Let me get my notes, and I can tell you.
(Referring to papers.)

A. (Resuming): I know definitely of fifteen.

Q. Fifteen definitely?

A. And there must have been another ten.

Q. There must have been another ten. How many of these had contributed to you even before you talked with Mr. Hansen? A. None.

Q. How many did you know you represented at the time you talked to Mr. Hansen?

(Testimony of Elvin P. Carney.)

A. Well, definitely, just Doctors Kiefer, Dougherty, and Burkhart.

Q. Dr. Kiefer, Dr. Dougherty, and Dr. Burkhart?
A. And Mr. Fraser.

Q. And Mr. Fraser. Those were the only ones that you are able definitely to say you represented at the time you talked to Mr. Hansen?

A. With which I had sufficient conversation with them that they said to go ahead on the thing. We had a meeting Wednesday night,—that is the Wednesday before the 30th on which the transfers occurred, in which we outlined some of this, and they wanted me to go ahead and do whatever I thought was best and repeatedly stated they were a committee of stockholders. I want to advise your Honor, too, that in all proceedings we gave notice to all known stockholders of holding a meeting, and told the stockholders what had transpired.

Q. When was that?

A. That was about a week afterwards.

Q. About a week after the transfer?

A. Yes.

Q. And how many stockholders came?

A. Oh, there was about 30 of them there.

Q. About 30 present?
A. Yes.

Q. And how many of those affirmatively approved what was done?

A. There was no exception taken, I will put it that way, to what I had done.

Q. No exception. Was there any signature of

(Testimony of Elvin P. Carney.)
approval?

A. No. In other words, at this meeting we told the stockholders what facts we had found, and what we had done, and then discussed with them the possibility of saving the company.

* * *

Q. Did you know how many stockholders you represented at that time? A. No.

Q. Did you tell Mr. Hansen how many stockholders you represented? A. No.

Q. Do you know now how many stockholders you represented at that time?

A. No. All the stockholders were asked to contribute to my fee.

Q. Did you at that time purport to represent the corporation, or did you purport to represent some of the stockholders?

A. At this meeting with Mr. Hansen, some of the stockholders.

Q. Did you tell him who they were?

A. He knew from our meeting on Saturday that I had been called in by Dr. Kiefer and the other members of the committee that were there at the Saturday meeting.

* * *

The Court: I will ask no more questions of the witnesses at present. I am satisfied to put no more questions to the present witnesses. Now, is there anything that any counsel would like to do at this time?

(Testimony of Elvin P. Carney.)

Mr. Wiley: Mrs. Hansen is here, if you wish to call her.

The Court: I have stated that I have asked all the questions that I care to ask at this time of the witnesses present. Now, is there anything any counsel would like to do?

(No response.)

(Discussion off record between Court and counsel concerning appearances of witnesses tomorrow.)

The Court: The matter is continued until eleven o'clock tomorrow morning.

I will expect Mr. Wiley here personally. I will expect counsel for the receiver to be here personally, and counsel for the trustee is to be here as long as he can, and he is consenting that the proceedings may be carried on in his absence when he must leave.

* * *

Continuation of Proceedings, 11:00 o'Clock A.M.

August 26, 1949

DR. JOHN B. KIEFER, JR.

being first duly sworn, testified on oath as follows:

Examination by The Court:

* * *

Q. Well, I will ask you, Dr. Kiefer, is this summarized statement of your testimony other than

(Testimony of Dr. John B. Kiefer, Jr.)
with the possible reference to Receiver's Exhibit 18 in accordance with the testimony you gave?

A. Yes.

Q. The summary is correct as you remember it?

A. Yes.

Q. Is the summary true? Is the testimony as summarized true? A. Yes, sir.

* * *

Q. Now, is there anything further you would like to say?

A. Well, only in reference to the distribution of stock. These figures show that we were led to believe that the only sale of stock would be the stock so designated, and no stock given to Fay Hansen was to be sold.

Q. Who told you that?

A. Fay Hansen told us that.

Q. He told you that no stock distributed to him was to be sold?

A. That is right. In other words, there was to be no profit made by himself during this developmental stage other than the \$440 monthly income or salary.

Q. Who was that to be paid to?

A. That was to be paid to Fay Hansen.

Q. What was to be done with the monies from the sale of stock?

A. \$16,000 cash was for a working fund for the business. There was \$5,000 of notes outstanding,

(Testimony of Dr. John B. Kiefer, Jr.)

which was to be cared for, and \$18,000 was going to Paul Shafer, to pay his uncle.

Q. What else?

A. That was all. That was the way the structure was to be built up. In other words, \$39,000 was to be raised and allocated to operating the business in this manner. That is why this evidence does not correspond there.

Q. How many shares of stock did he tell you he was to get?

A. 300 shares.

Q. He told you he was to get 300 shares?

A. Yes.

Q. When did he tell you that?

A. On February 20th.

Q. What year?

A. 1948.

Q. Did you know he had any drawing account other than his salary?

A. No, I did not, and he definitely told us many times that the \$440 was all he was withdrawing.

Q. Were there any loans made by anybody to the company?

A. Oh, many.

Q. Did you loan any money?

A. Yes, I loaned money on about four different occasions.

Q. Altogether how much?

A. About \$7,000.

Q. Has any of that been paid?

A. \$3,000.

Q. \$4,000 is still due you?

A. No, I am wrong. Just a minute. \$9,000 was loaned, and \$3,000 of that was returned.

(Testimony of Dr. John B. Kiefer, Jr.)

Q. There is \$6,000 still owing you on loans?

A. That is correct.

Q. What were you told the proceeds of such loans were to be for?

A. Well, in the first place, for over-purchase on bottles for his juice and \$16,000 reserve. That was for working capital. He had no funds with which to proceed. So I was theoretically buying oranges. On one occasion — I forget which deal it was, whether it was the last or not—he came to me and said he had an opportunity to buy a carload of distress oranges from the Sunkist people. Someone had ordered it and failed to take them over, and these oranges were wrapped. Of course, most of the oranges were unwrapped, and in my frequent visits to the plant there were no wrapped oranges that entered the plant after that loan was made. So I took it that it was just an out-and-out lie to me.

* * *

DR. HAROLD BURKHART

being first duly sworn, testified on oath as follows:

Examination by The Court:

* * *

Q. Assuming this corporation, Vita-Pakt Associates, was incorporated about February, 1948, about when did you meet Mr. Hansen?

A. Oh, in the fall. I would say around October.

Q. 1947? A. Yes.

(Testimony of Dr. Harold Burkhardt.)

Q. Did you become a stockholder of this corporation? A. Yes, sir.

Q. How many shares did you have?

A. Well, personally, I had three shares, that is, I had one, and my two daughters each had one.

Q. How much did you pay for them?

A. I paid \$100 for mine, and for theirs, each.

Q. You mean \$100 each? A. Yes.

Q. Did you buy any other stock?

A. No, sir.

Q. Did you ever have an interest in any other stock, other than such interest as you had in these three shares?

A. Only to the extent that I hoped eventually that Mr. Hansen might reward some of the effort that I was putting forth to help them by giving me some of his personal stock, although he never promised it.

Q. You knew he had some personal stock?

A. Yes, quite a good deal.

Q. Did you know what his personal stockholding was?

A. Only approximately. It was supposed to be in the neighborhood of forty thousand.

Q. What? A. \$40,000.

Q. On the basis of \$100 per share, about 400 shares? A. Something like that.

Q. Where did you learn of such approximate number of shares?

A. By what he told me, is all I know.

(Testimony of Dr. Harold Burkhardt.)

Q. And you say you hoped he might reward you?

A. Yes.

Q. You were making efforts then in his behalf?

A. Well, I was making efforts actually in behalf of the company, because I felt it was a very greatly needed enterprise in Seattle.

Q. What did he tell you as to whether or not the sale of orange juice was being made at a profit or a loss?

A. Well, he constantly told us, to me individually and the group, that it was being sold at a profit, a considerable profit.

Q. Did you know that he was selling his personal stock?

A. I can't be sure because he told me a number of different things which I afterwards questioned, but I felt that his personal stock was being involved somewhere in some of the transactions.

Q. Well, other than as a bonus, did you understand that his personal stock was being sold?

A. No, I did not. I knew he told me that he was giving some of his personal stock as a bonus.

Q. Did you loan any money to the company?

A. No, sir.

Q. Did you become an officer of the company?

A. Yes, sir.

Q. When?

A. Oh, I think—well shortly after the company was organized, Mr. Todd, who had been acting as attorney for the company, requested that his name

(Testimony of Dr. Harold Burkhardt.)

be taken off and a Board of Directors elected, and it was, I should say, probably in March some time of 1948.

Q. What officer did you become?

A. Vice President.

Q. Did you ever become any other officer?

A. No, sir, there was never a stockholders' meeting during the time I was in office.

* * *

The Court: All right. Are there any questions by any attorneys of Dr. Burkhardt?

Mr. Wiley: Yes.

Examination by Mr. Wiley:

Q. Dr. Burkhardt, the stock that you received from Fay Hansen was given in payment of a dental bill that he owed you, was it not?

A. My one share of personal stock, yes, but I paid for my daughters' two shares and paid in cash.

Q. And you knew that was his own personal stock he gave you for the dental bill?

A. No, that was just regular stock that was being sold.

Q. You say "regular stock." There wasn't anything irregular about the stock?

A. I don't mean that. I mean it was capital stock set aside as stock to be sold. He had his own personal stock and this stock to be sold.

Q. I thought you said, and you have told me

(Testimony of Dr. Harold Burkhart.)

that at one time he was selling a lot of his own personal stock to help the company out?

A. Yes, I understand that. Now, just a moment. It may be that the share of stock that he gave me might have been from his own personal stock. That might possibly be, but the other two that I bought for my daughters was company stock. That is a little detail I am not clear on.

Q. And you examined the corporation books, didn't you?

A. Well, I looked over—no, I have never seen the corporation books themselves.

Q. Didn't you see the papers Mr. Thomas Todd drew up, that sheet of allotment of shares?

A. Oh, yes. I saw it, but I don't remember the details now.

Q. And if those books showed Mr. Hansen was to get 530 shares, you were familiar with that?

A. I could not be sure of any figures on that because my memory is not too good.

Q. But you did see the books showing the allotment of shares?

A. Yes, I saw them; yes, indeed.

* * *

DR. GEORGE CHATALAS

being first duly sworn, testified on oath as follows:

Examination by The Court:

* * *

Q. Have you read the summary of your testimony as made by the Referee in Bankruptcy, Van C. Griffin? A. Yes, I have read it.

Q. The summary of your testimony on December 8, 1949, before the Referee in Bankruptcy in this matter? A. Yes, I was just reading it.

Q. Well, you may finish reading it. You may take your time to do so.

A. (Witness does so.)

(Recess.)

Q. Dr. Chatalas, you have read the summary?

A. Yes, I have.

Q. Is the summary correct? A. Yes, sir.

Q. This is the testimony you gave before the Referee in Bankruptcy?

A. That is right, your Honor.

Q. And is that testimony as summarized true?

A. Yes, it is.

Q. Did you know Mr. Hansen was selling any stock of his own?

A. No, sir. The only inkling I had of that, that he had stock of his own, was that it was bonus stock which he was offering to some of the stockholders if they would buy more shares of stock in the corporation, or if they were responsible for

(Testimony of Dr. George Chatalas.)

selling for him then he would give them a hundred dollars worth of stock as a bonus from his own personal supply.

Q. What did he say was to be done with the proceeds from the stock sold?

A. That was to buy new equipment, because the equipment he had at that time was only producing about 300 or 400 gallons a day, and he had demands for around 700 or 800 gallons a day, and that he had to buy new equipment.

Q. Did you know about any loans being made by stockholders to the company?

A. He contacted me to lend him some money.

Q. Did you? A. No, sir.

Q. What did he tell you was to be done with the money that he wished you to loan?

A. That he was in a jackpot as far as money was concerned to buy oranges, and the business could not be kept up because he had to have the oranges in order to produce orange juice. I asked him once or twice how come there wasn't money enough since he was selling so many gallons of juice a day,—why didn't he have enough money to buy oranges, and he told us in that one meeting that he got himself in a mess by buying too many cartons, about \$15,000 worth of cartons to put juice in, and that is what left the company short of capital.

* * *

OPINION OF THE COURT

The Court: I may say, gentlemen, I am ready to state my conclusions.

My conclusions are quite opposite to the conclusions of the Referee. It is clear from the transcript of the evidence and the evidence that I have heard yesterday and today that Mr. Hansen grossly deceived those who invested their money for stock and grossly deceived those who made loans. It is clear by the overwhelming preponderance of the evidence that those who bought stock and paid money and those who made loans, paid the money and made the loans upon the assurance by Mr. Hansen that the money was to be used as working capital for the company. It is clear by the overwhelming preponderance of the evidence that Mr. Hansen grossly misrepresented the amount of orange juice that was being produced, that he grossly misrepresented the condition of the company, and grossly misrepresented the profit, saying that a substantial profit was being realized when each gallon of orange juice was being sold at a loss.

Unquestionably, \$4,500 was traced from the corporation to the purchase of a house. Not a cent, under the overwhelming evidence, of that \$4,500 could have come from stock sales. Such was the proceeds of loans which were made for the purpose of helping the company operate. Without the loans the company had no money. With the loans the company had more than \$4,500 which Mr. Hansen speedily misappropriated.

So I may say that not only by the preponderance of the evidence but beyond all reasonable doubt under the evidence \$4,500 of corporate funds went into the house.

By the great preponderance of the evidence a thousand dollars further of corporate funds went to the house. By the preponderance of the evidence the figure which I recall as between three and four hundred dollars went from corporate funds towards the purchase of an automobile. Under the overwhelming evidence the corporation never made a demand upon Mr. Hansen to do anything. Mr. Carney, representing a vague group of some of the stockholders, advised Mr. Hansen upon Mr. Hansen's inquiry, that the stockholders would feel much more kindly toward Mr. Hansen if he made his best efforts at restitution of his unauthorized extractions of money from the corporation by transferring certain property.

He was told that whether the stockholders would or would not prosecute was not under Mr. Carney's control. Mr. Hansen was advised by Mr. Carney that in Mr. Carney's opinion the stockholders would not prosecute if he did make the transfers. Mr. Hansen was told that his violations of law concerned his misrepresentations as to the purpose of the stock proceeds, the purpose of the loan proceeds, that his misrepresentations included claims by him that he was making a profit from orange juice when he was selling at a loss, and his misrepresentation

that the sale of orange juice was large in quantity when it was only a fraction thereof.

Mr. Hansen was also told that in addition to these various offenses, which it would seem would constitute felonies under the law, he had also committed a misdemeanor by doing certain acts without a license as required by what has been referred to as the State "Blue Sky" law.

Mr. Hansen did not make a transfer to merely the clients represented by Mr. Carney. Mr. Hansen and his wife made a transfer to the corporation for the benefit of all the stockholders insofar as the transfer could benefit them, including his own father-in-law. He had a moral and a legal obligation to try to return to the corporation the funds which he had taken without authority.

I don't know whether he sold any of his stock or not. At least, his actions and conduct and statements led the stockholders to believe that the stock that was being sold was the stock of a corporation for the benefit of the corporation, and that he, personally, was donating some of his own personal stock as a bonus to stimulate sales.

If, however, it should be held that 49 shares of the stock by the calculated guesses was a sale of his stock, then under his evidence he got the benefit of such by payments to certain persons which payments, under his testimony, he was personally obligated to make.

His conveyances and transfers were voluntary on his part, stimulated by his idea that it was good

policy for him to make the transfers with the hope that the stockholders would not prosecute him. He had no promise that he would escape prosecution by such transfers. There was no threat made to him that if he did not make the transfers he would be prosecuted. He was advised he had broken the law.

At the time he and his wife made the transfers, he acted for what they thought was their best benefit selfishly. In so acting Mr. Hansen was acting in accord with what he should have done. Certainly, it shocks the conscience that a man should do what the evidence shows he did do, and that he should get the benefit and that the stockholders and those who loaned the money in good faith should sustain the loss.

I have heard not a syllable of explanation by Mr. Hansen in justification of those gross misrepresentations. In effect there has been a callous disregard on his part of his moral obligations. I have searched through the record and cannot understand what excuse even he makes for the deceit he practiced. If he sold any of his own stock, he did it surreptitiously. He was not able yesterday to give me the name of a single individual to whom he had sold his own stock except his father-in-law. He having been wholly unconcerned with the truth as to the stockholders, there is no reason for me to place any credence as to what he claims about the sale of stock to his father-in-law. But if he did sell his father-in-law twenty shares, that would be

twenty of forty which were sold over what would have been the stock belonging to the company providing he was entitled to 531 shares.

One stockholder in good faith testified that he was told by Mr. Hansen that Mr. Hansen was to get 300 shares which he was to hold. Another stockholder understood it was 400 shares. Under either of such statements there were no 49 shares of Mr. Hansen's stock to be sold.

The receiver will be entitled—just a moment. I will ask a question. The house was sold for how much—the equity?

Mr. Walsh: I don't know the exact figure, but about \$8,500.

The Court: The car was sold for how much?

Mr. Walsh: If you will bear with me a moment, I will tell you exactly.

The net on the house was \$7,051.30.

The Court: \$7,051.30. And the car?

Mr. Walsh: The net again on the car was \$469.29.

The Court: What about the household furniture?

Mr. Walsh: \$1,514.

The Court: Net?

Mr. Walsh: Net. Those are my figures.

The Court: All right.

Mr. Walsh: They were sold—I should preface it by saying they were sold in a lump. For instance, the furniture and house and car and vacant lot all went as one parcel, and they have never been actually segregated.

The Court: How much money came from the vacant lot? Is it included in these figures?

Mr. Walsh: No, it is not.

The Court: The vacant lot——?

Mr. Walsh: \$236 net.

The Court: The receiver will receive \$5,500 plus \$349, or thereabouts, that represented the car, plus \$320, which I understand the receiver paid to protect the lien. The balance of the proceeds will go to the trustee.

Mr. and Mrs. Hansen voluntarily for their own selfish benefit made the transfer. It was a selfish benefit for themselves that they were thinking of, but what they did was in accord with what Mr. Hansen as an honest man should have been glad to have done. For some reason or other, after he made the transfer, he decided that another course of action was for his benefit, and he attempted to repudiate his transfer.

We are not in the situation where a corporation coerced a man to do something for the benefit of a corporation. We are in the situation where an attorney representing two or three or five or ten stockholders advised a man that he had wronged the stockholders, and that he felt satisfied that the stockholders would feel more kindly toward him if he did that which he ought to do. It is not a case of where an attorney demanded restitution be made to his clients. It is where an attorney suggested a certain course of action as proper and that the transfer should be made to the corporation for all the stockholders' benefit, including the father-in-law.

Other than these items that have been traced by the substantial preponderance of the testimony and in part beyond all reasonable doubt, the transfers were sufficiently of the nature of a preference of a corporation creditor to entitle the trustee to the balance of what has been obtained above the specific items I mentioned.

Mr. and Mrs. Hansen chose at one time for their benefit to do a certain thing, to prefer the corporation, because they thought it would help Mr. Hansen. They voluntarily transferred what in part might have been exempt. It is very difficult for me to believe that under the history of the house that house would have been exempt to them when Mr. Hansen only obtained the \$4,500 for the house by inexcusable and gross deceit practiced upon men whom he induced to make a loan for the benefit of the corporation. It is very difficult for me to understand that justice, equity or law could be in accord with his keeping the fruit of such fraud.

I have based my decision upon the record plus the evidence which I have heard in court, supplemented by the fact that I have had an opportunity to look at the witnesses and see their manner of testifying. Certainly, the evasive testimony of Mr. Hansen yesterday supported the appearance of evasiveness in his testimony as transcribed previously.

The version of a man who did not know whether he had a dollar's worth of stock or thirty thousand in a company that he had organized a little more than a year ago, and which ran its course about a year ago is incredible.

Judgment and such findings as may be appropriate may be presented in due course after notice.

Mr. Johnson: May I raise two questions?

The Court: You may.

Mr. Johnson: First, with respect to two items set forth in the petition for review. One is a small amount, but I feel we should have it. It is \$72.00 for the vacuum cleaner paid for directly by corporation funds. The evidence is in the record pertaining to it.

The Court: Well, I am not satisfied by the overwhelming testimony that I can trace such, or I am not satisfied that the preponderance of the evidence traces such, and that \$72.00 will go to the trustee.

Mr. Johnson: Is your decision the same with respect to the \$500 promissory note?

The Court: Yes, I have made a statement of the amount the corporation is entitled to receive——

Mr. Johnson: Thank you, sir.

The Court: ——which, as I remember it, is about \$5,500, plus about \$349 plus about \$320. The trustee gets the balance and the bankrupt none.

I appreciate the attendance of the parties. I regret the delay that has been occasioned in my decision. There were many complications as to the evidence itself, and other duties interrupted. Ultimately, I felt that the summary of the untranscribed testimony was so important that I should have the witnesses, the important witnesses at least, verify under oath the correctness of the summary, if such was correct, or to supplement such if they deemed such necessary. Further, I was left in the dark by

the record as to whom Mr. Carney represented. It, of course, is a puzzle yet. I doubt very much if he would have been able to have collected a fee against more than two or three stockholders. There may have been a later ratification of his action by stockholders when they subscribed to his fee, but that ratification was subsequent to what transfers Mr. Hansen made; and, of course, Mr. Carney was not speaking with authority for such individuals because he did not know who his clients were.

I was also anxious to see Mr. Hansen personally.

The decision I have made is the best I can make; I hope it is entirely correct. I am sure that in substance it is in accord with what the decision ought to be.

Thank you for returning this morning.

Certificate

I, James R. Royse, do hereby certify that I am official court reporter for the above-entitled Court, and as such was in attendance upon the hearing of the foregoing matter.

I further certify that the above transcript is a true and correct record of the matters as therein set forth.

/s/ JAMES R. ROYSE,
Official Court Reporter.

[Endorsed]: Filed February 9, 1950.

In the District Court of the United States, for the
Western District of Washington, Northern
Division

No. 37,835

In the Matter of

FAY J. HANSEN,

Bankrupt.

Black, J.

STENOGRAPHIC TRANSCRIPT
OF PROCEEDINGS

October 17, 1949

* * *

The Court: The Court also is interested in having presented today by evidence as may be introduced by the interested parties as to the history of any motions to amend and as to any reconsideration of the exemption order.

You may proceed, gentlemen.

Mr. Walsh: I would like to be sworn.

WILLIAM J. WALSH, JR.

being first duly sworn, testified on oath as follows:

* * *

The Witness: On October 20, 1948, the Referee by order approved the trustee's report of exempt property but did not, as is customary, order immediate delivery of the property to the bankrupt. More than ten days thereafter and at a time when

(Testimony of William J. Walsh, Jr.)

the show cause hearing was in progress wherein Ernest A. Jonson had been ordered to show cause why certain transfers to Vita-Pakt Associates should not be set aside as a voidable preference, and at the time of hearing the matter of voidable preference was joined in by the bankrupt, and the order to show cause was joined in by both the bankrupt and the trustee, when the evidence had been concluded in that matter and at the time the findings of fact and conclusions were being presented to the Referee and the Referee had indicated he would not find one way or the other as to whether or not the transfers to Vita-Pakt Associates had been procured by duress, the trustee through his attorneys moved orally that his petition for order to show cause be amended to include a petition that the order allowing the bankrupt's exemptions be reconsidered and the exemption order set aside.

The Referee, to the trustee's information, granted that petition and stated the trustee's petition would be deemed to be orally amended to embrace the petition aforementioned and further stated the evidence introduced at the show cause hearing would be considered as applying to the trustee's petition to vacate the order of October 20, 1948, wherein the bankrupt was granted his exemptions.

After hearing argument on the trustee's amended petition to vacate such order the Referee orally decreed the trustee's petition to set aside the prior order granting bankrupt's exemptions would be denied. In entertaining the petition that the Referee's

(Testimony of William J. Walsh, Jr.)

order approving the allowance of bankrupt's exemptions be reconsidered and said exemptions be disallowed the Referee stated that the evidence as to whether the transfers were involuntary or whether they constituted voidable preferences would be borne in mind.

The Referee listened to argument of counsel that under the evidence brought to light at the hearing the previous order allowing the exemptions was erroneous as a matter of law. The Referee further stated that despite the 1938 amendment of Section 6 of the Bankruptcy Act he doubted that a mere voidable preference would result in the loss of the bankrupt's exemptions in the property so transferred and that in any event he did not think he had authority to set aside his own order after the time for appeal therefrom had expired.

Subsequently, when new findings and conclusions and judgment were presented to the Referee for signature, the parties in court in the Referee's presence and with the aid of the Referee reduced their objections and compromises in regard to the findings and conclusions to writing. It was further proposed that the receiver, having previously typed the findings and conclusions, and the bankrupt's attorney having typed the judgment—I will correct that—these proposed findings and proposed judgment—the trustee's attorney volunteered that he would have findings and conclusions as corrected typed and the bankrupt's attorney volunteered that

(Testimony of William J. Walsh, Jr.)

he would retype, if necessary, the judgment. The only change in the judgment was to be in the Referee's oral ruling, the statement that "the petition of the trustee to have the Referee's order approving allowance of bankrupt's exemptions set aside is denied."

The bankrupt's attorney protested that this was unnecessary and that it would involve retyping of the order, and asked that the proposed judgment without this addition be accepted by all parties in view of the fact that the findings of fact stated, "The pleadings of the parties will be deemed amended to embrace a petition of the trustee that the Referee's order approving the allowance of bankrupt's exemptions be reconsidered and said exemptions be disallowed." Also, that the conclusions of law stated in paragraph IX, "that the bankrupt is entitled to claim exemptions in certain proceeds of sales as provided by the laws of the State of Washington, * * *" and "that the petition of the trustee to have the Referee's order approving the allowance of the bankrupt's exemptions set aside should be denied."

Such quoted portions of the findings of fact and conclusions of law are on record herein.

In view of the argument of the bankrupt's attorney and as an accommodation to him, the trustee permitted the order to be entered without any change. Thereafter the trustee's attorney, thinking that the bankrupt's attorney might take undue ad-

(Testimony of William J. Walsh, Jr.)

vantage of this accommodation to him, petitioned the Referee in Bankruptcy to enter a supplemental order on the show cause hearing reciting therein, "that the order on show cause hearing entered herein January 17, 1949, be and the same is hereby supplemented by the addition of a paragraph number IV to read as follows, 'the petition of the trustee to have the Referee's order approving the allowance of bankrupt's exemptions set aside is denied.' "

That special supplemental order I believe to have been entered on February 11th, but the exact date appears of record herein.

* * *

The Court: It will be filed as an exhibit.

Before the matter of cross-examination is taken up, I wish to be sure I heard the witness right. Do I understand that at one time the attorney for the bankrupt offered to rewrite the order and findings and thereafter decided not to?

The Witness: I believe—I cannot say for sure, but I believe the attorney for the bankrupt offered to do so if there was to be any change made. He then indicated that the change would be so slight and would be encompassed in the findings and conclusions at all events, that it would be an unnecessary act and that he proposed it be signed as previously submitted if I would so agree. As an accommodation the trustee's attorney so agreed.

* * *

(Testimony of William J. Walsh, Jr.)

Cross-Examination

By Mr. Wiley:

Q. Mr. Walsh, did I ever make any representation or agreement of any kind with you that I would not take advantage of anything that was in the record? A. No.

* * *

CARL A. JONSON

being first duly sworn, testified on oath as follows:

Examination by The Court:

Q. Aside from the question of cost of sale and the trustee's suggested allocations, do you agree or disagree with the testimony that the previous witness has given?

A. I am substantially in accord. To the best of my recollection, as indicated, I had prepared proposed findings of fact and conclusions of law, and likewise a proposed judgment. The Referee in determining what findings would be made went over my findings line by line, and, of course, changes were made since they did not or were not in accordance with his oral decision. Thereafter it was agreed that Mr. Walsh would prepare the findings and Mr. Wiley prepare the order. At the time they were presented I recall Mr. Walsh calling it to the attention of the referee that Mr. Wiley had made no provision in the order for the matter of denial

(Testimony of Carl A. Jonson.)

of motion to deny the exemptions, and the discussion was about as stated, that it was not necessary to retype the order, and rather than have the order retyped and have us go up there again, it would be entered as it was. Subsequently the matter was reargued upon Mr. Walsh's presentation of a supplemental order before the Referee. As I recall it, the Referee had no independent recollection of his own of what had transpired, but on the basis of my recollection and Mr. Walsh's recollection the Referee did sign the supplemental order.

* * *

The Court: Does the trustee wish to call the Referee as a witness? I am not requiring it.

Mr. Walsh: I would like the Court to have the Referee's testimony if he has any independent recollection of what transpired on January 17th. I will call Judge Griffin.

VAN C. GRIFFIN

being first duly sworn, testified on oath on behalf of of the trustee as follows:

Direct Examination

By Mr. Walsh:

Q. Judge Griffin, on January 17th, at which time the order on the show cause hearing was signed by yourself in your capacity of Referee, do you recall argument between myself and Mr. Wiley, attorney

(Testimony of Van C. Griffin.)

for the bankrupt, as to whether or not his judgment on the show cause hearing conformed with your oral decision?

A. I don't have any recollection of the date being the 17th. I do remember you and Mr. Wiley were before me more than once, and I do remember the matters as you testified to generally. But as to stating that on a certain date you had a certain discussion, I can't say.

* * *

Mr. Wiley: I would like to be sworn.

ALEX WILEY

being first duly sworn, testified on oath on behalf of the bankrupt as follows:

The Witness: My recollection is that in the Referee's memorandum decision he said that the bankrupt might apply to the Court for the allowance of exceptions, and later on when the order was entered, as a matter of strategy, I did not think it was necessary to have the exemptions allowed in that order. The Referee had not indicated clearly that he would allow them and Mr. Walsh and he had talked several times about the question. I always tried to get him to leave the matter of exceptions out because I considered my prime opponent was the receiver, and he had talked constantly of appealing. I thought I would like to limit the

(Testimony of Alex Wiley.)

question on review to his rights, and Mr. Walsh and I often talked about the question of exemptions being something we could probably get together on and settle. It was for that reason I did not want in the final order any definite order disallowing the exemptions, and I did not think that the order the Court entered from which the review was taken definitely decided one way or the other the bankrupt's right to exemptions. Later on Mr. Walsh apparently changed his mind and wanted to inject that question into the order, and for that reason proposed the supplemental order. I opposed it before the Referee because I stated I thought it was improper for the Referee to enter another order while the matter was on review then, and I did not think it was necessary as far as the issues of the case then were and that when the review was disposed of Mr. Walsh and I could thrash out the question of exemptions.

* * *

Cross-Examination

By Mr. Walsh:

* * *

Q. Mr. Wiley, you did ask that you not have to retype your judgment to embrace the paragraph which I asked to be entered "that the petition to disallow the bankrupt's exemptions is hereby denied"?

(Testimony of Alex Wiley.)

A. I think I told you I did not think it had any part in the order and should not be there, and for that reason I wanted it signed the way it was.

Q. Did you ever ask that you not be required to retype the order because it was an unnecessary act and was implicit in the order because it was embraced in the findings and conclusions?

A. No, I absolutely deny that.

The Court: Are you through?

Mr. Walsh: Yes.

* * *

The Court: The Court, from the testimony of Mr. Jonson and Mr. Walsh and from the other testimony presented by the other witnesses, is satisfied that the motion to amend the petition to include the matter of exemptions was before the Referee, and that such motion was denied, and the Court is satisfied from all that it has heard that at the time the formal order was entered that it was the position of the attorney for the bankrupt that it was unnecessary for such order to be amended in order to make effective the denial as set forth in the findings and conclusions.

* * *

Certificate

I, James R. Royse, do hereby certify that I am official court reporter for the above-entitled Court, and as such was in attendance upon the hearing of the foregoing matter.

I further certify that the above transcript is a true and correct record of the matters as therein set forth.

/s/ JAMES R. ROYSE,
Official Court Reporter.

[Endorsed]: Filed March 3, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK UNITED STATES
DISTRICT COURT TO RECORD ON
APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 11 as Amended, of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of Civil Procedure, I am transmitting herewith all of the original pleadings on file and of record in said cause in my office at Seattle, together with reporter's transcripts of proceedings, and Exhibits 1 to 19, inclusive, 21, 21a, 22, 22a and 23 to 55, inclusive, as set forth below, and that said pleadings, reporter's transcripts and exhibits constitute the record on appeal from the Order on Petition to Review and Final Judgment filed November 1, 1949,

and entered November 2, 1949, to the United States Court of Appeals for the Ninth Circuit, to wit:

1. Debtor's Petition and Schedules.
2. Adjudication of Bankruptcy and Order of Reference.
3. Statement of Affairs.
4. Bond of Trustee R. C. Nicholson.
5. Letter from Referee in Bankruptcy to Clerk of Court.
6. Letter from Referee in Bankruptcy to Clerk of Court.
7. Additional Bond of Trustee R. C. Nicholson.
8. Referee's Certificate on Review, attached to which are the following:
 - 8-1. Trustee's Report of Exempt Property.
 - 8-2. Order Approving Trustee's Report of Exemptions.
 - 8-3. Bankrupt's Petition for Issuance of Order Show Cause.
 - 8-4. Order to Show Cause.
 - 8-5. Special Appearance by Johnson & Dafoe, Attorneys for Receiver Vita-Pakt Associates, Inc.
 - 8-6. Trustee's Motion, and Order, attached to which is proposed form of stipulation.
 - 8-7. Stipulation dated November 26, 1948, re sale of property.

8-8. Trustee's Petition for Issuance of Order to Show Cause.

8-9. Order to Show Cause dated November 29, 1948.

8-10. Answer of Ernest A. Jonson, Receiver of Vita-Pakt Associates, Inc., to Petition and Order to Show Cause of Fay J. Hansen, Bkpt.

8-11. Answer of Ernest A. Jonson, Receiver of Vita-Pakt Associates, Inc., to Petition and Order to Show Cause of Trustee of Estate of Fay J. Hansen, Bankrupt.

8-12. Reply of Bankrupt to Affirmative Defenses of Ernest A. Jonson.

8-13. Trustee's Reply to Receiver's Answer.

8-14. Referee's Memorandum Decision dated December 30, 1948.

8-15. Proposed Findings of Fact on Order Show Cause Hearing (rejected by referee).

8-16. Notice by Receiver of presentation of objections and exceptions to Findings, and Objections and Exceptions attached thereto.

8-17. Referee's Findings of Fact on Order Show Cause Hearing, and Conclusions of Law on Show Cause Hearing.

8-18. Referee's Order on Show Cause Hearing.

8-19. Receiver's for Extension of Time to file petition for review.

8-20. Referee's Order extending time to file petition for review.

8-21. Referee's Order extending time to file petition for review.

8-22. Petition for extension of time to file petition for review, by trustee.

8-23. Petition for Review, by Receiver.

8-24. Petition for Review of Referee's Order, by Trustee.

8-25. Trustee's Motion for Supplemental Order on Show Cause Hearing.

8-26. Referee's Supplemental Order on Show Cause Hearing.

8-27. Trustee's Trial Brief and Memorandum of Authorities.

8-28. Trustee's Supplemental Trial Brief and Memorandum of Authorities.

8-29. Receiver's Memorandum of Authorities.

8-30. Receiver's Supplemental Memorandum of Authorities.

8-31. Receiver's Second Supplemental Memorandum of Authorities.

8-32. Bankrupt's Brief.

8-33. Bankrupt's Brief.

8-34. Reporter's Transcript of the Proceedings.

8-35. Summary of Unreported Testimony Ad-
duced on Wednesday, Dec. 8, 1948.

9. Letter from Referee in Bankruptcy to Clerk
of Court.

10. Memorandum of Authorities on Behalf of
Trustee.

11. Receiver's Memorandum of Points in Sup-
port of Petition for Review.

12. Bankrupt's Brief Answering Trustee.

13. Bankrupt's Brief Answering Receiver.

14. Acknowledgment of Service.

15. Trustee's Brief, Answering Receiver.

16. Trustee's Brief Replying to Bankrupt re:
Exemptions.

17. Brief of Receiver of Vita-Pakt Associates,
Inc., in Reply to Bankrupt's Answering Brief.

18. Reply of Receiver of Vita-Pakt Associates,
Inc., to Trustee's Answering Brief.

19. Reporter's Transcript of Court's oral de-
cision dated August 26, 1949.

19-a. Letter from Alex Wiley addressed to the
Hon. Lloyd L. Black citing cases used in oral argu-
ment.

19-b. Proposed Findings of Fact and Conclu-
sions of Law by Receiver (lodged).

19-c. Proposed Judgment, by Receiver (lodged).

20. Receiver's Motion to Tax Costs.

21. Notice of Presentation of Findings of Fact and Conclusions of Law and Judgment and Motion to Tax Costs, with copies of said proposed documents attached.

22. Objections of Bankrupt to Findings of Fact, Conclusions of Law, and Order proposed by Trustee and Receiver.

22-a. Proposed Findings of Fact and Conclusions of Law by Bankrupt (lodged).

22-b. Proposed Order on Petition for Review, by Bankrupt (lodged).

22-c. Trustee's Statement of Action Desired to be Taken by the Trustee.

22-d. Trustee's Statement of Objections as to Form of the Proposed Findings, Conclusions and Judgment of the Bankrupt and Receiver.

22-e. Trustee's proposed Findings of Fact and Conclusions of Law (lodged).

22-f. Trustee's proposed Order on Petition for Review (lodged).

23. Statement of "Costs of Sale."

24. Bankrupt's Additional Objections to Proposed Findings and Order.

25. Referee's Minutes of Special Meeting of Creditors; and Order Allowing Special Fee to Trustee's Attorney.

26. Bankrupt's Proposed Additional Findings of Fact.
27. Findings of Fact and Conclusions of Law signed and filed November 1, 1949.
28. Order on Petition to Review signed and filed November 1, 1949.
29. Bankrupt's Motion for New Trial.
30. Order Denying New Trial.
31. Bankrupt's Notice of Appeal filed January 10, 1950.
32. Bankrupt's Cost Bond on Appeal.
33. Copy of letter from Clerk of Court to Messrs. Johnson & Dafoe, attorneys for receiver, enclosing copy of Notice of Appeal.
34. Copy of letter from Clerk of Court to Messrs. Barker & Day, attorneys for trustee, enclosing copy of Notice of Appeal.
35. Bankrupt's Amended and Supplemental Notice of Appeal.
36. Copy of letter from Clerk of Court to Messrs. Johnson & Dafoe, attorneys for receiver, enclosing Amended and Supplemental Notice of Appeal.
37. Copy of letter from Clerk of Court to Messrs. Barker & Day, attorneys for trustee, enclosing copy of Amended and Supplemental Notice of Appeal.

38. Reporter's Transcript of Proceedings on August 24, 25 and 26, 1949.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 14th day of February, 1950.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: No. 12481. United States Court of Appeals for the Ninth Circuit. Fay J. Hansen, Appellant, vs. Ernest A. Jonson, Receiver of Vita-Pakt Associates, Inc., an insolvent corporation, and R. C. Nicholson, Trustee of the Estate of Fay J. Hansen, Bankrupt, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division. Filed February 17, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

In Bankruptcy No. 37835

In the Matter of

FAY J. HANSEN,

Bankrupt.

POINTS ON WHICH APPELLANT RELIES

Appellant hereby sets forth a statement of the points on which he intends to rely on the appeal of the above-entitled cause, to wit:

I.

The order of the Referee in Bankruptcy should have been affirmed by the District Court.

II.

The District Court had no jurisdiction to vacate the Referee's Order refusing to set aside allowance of exemptions.

III.

The trustee was estopped from attempting to deny bankrupt's claim to exemptions after same had been allowed.

IV.

The District Court had no jurisdiction to award any funds to the receiver.

V.

The receiver waived any claim he may have had to any specific property of bankrupt and elected to become a secured creditor.

VI.

The findings of Fact of the District Court are inconsistent, and do not warrant or support the Order appealed from.

VII.

Appellant admits that \$5,897.00 used in the purchase of his house and car came from the bank account of Vita-Pakt Associates, but claims that said funds belonged to him.

VIII.

The following Findings of Fact of the District Court are clearly erroneous:

1. That the monies received from the sale of the capital stock of the corporation were property of the corporation.

2. That the sum of about \$16,000.00 withdrawn by bankrupt from the corporation bank account was the property of the corporation, and was appropriated for bankrupt's personal use.

3. That the transfers of bankrupt to the corporation were made voluntarily, and were not secured by threats or coercion.

4. That said transfers were not made at the request of the corporation or its representatives (though appellant admits said transfers were obtained by agents of a group of stockholders who were not authorized to act by any formal authority of the corporation).

5. That said transfers were not given for security.

6. That the Referee reconsidered and re-examined the merits of his original order of October 20, 1948, before denying trustee's petition to set aside such order approving allowance of exemptions.

IX.

The District Court was not warranted in calling witnesses, hearing some of the evidence on some of the issues, and picking and choosing bits of evidence in order to reverse the order of the Referee.

/s/ ALEX WILEY,

Attorney for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed February 17, 1950.

In the United States District Court for the Western
District of Washington, Northern Division

In Bankruptcy No. 37835

In the Matter of

FAY J. HANSEN,

Bankrupt.

ORDER EXTENDING THE TIME FOR FIL-
ING THE RECORD ON APPEAL AND
DOCKETING THE APPEAL.

This matter having come on for hearing without notice, in open court, on February 20, 1950, upon the oral motion of R. C. Nicholson, Trustee of the above-entitled estate, made through his counsel, William J. Walsh, Jr., for an order extending the time for filing the record on appeal and docketing the appeal; and no other party to this proceeding appearing; and it appearing from the record and files herein that an amended and supplemental notice of appeal was filed by the bankrupt-appellant herein on January 14, 1950, and that this order is made before the expiration of the period for filing and docketing an appeal as originally prescribed in Federal Rule of Civil Procedure 73g; and good cause appearing therefor, it is

Ordered that the time for filing the record on appeal and docketing the appeal in the Court of

Appeals of the Ninth Circuit is hereby extended to and including March 27, 1950.

Done in Open Court this 21st day of February, 1950.

Presented by:

LLOYD L. BLACK,
Judge.

WILLIAM J. WALSH, JR.,
Attorney for Trustee-
Appellee.

[Endorsed]: Filed February 23, 1950.